

9

United States
Circuit Court of Appeals
For the Ninth Circuit.

SIGNAL OIL AND GAS COMPANY, a Corporation,
Appellant.

vs.

UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Upon Appeals from the District Court of the United
States for the Southern District of California,
Central Division

FILED

JUN - 8 1941

PAUL P. O'BRIEN,
CLERK

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Answer of Defendant (Case No. 1460-Y)	16
Answer of Defendant (Case No. 1461-Y)	21
Answer of Defendant, Amended and Supple- mental (Case No. 1461-Y)	42
Appeal:	
Designation of Contents of Record on, Stipulated (District Court)	68
Designation of Contents of Record on, Stipulated (Circuit Court of Appeals).....	103
Notice of (Case No. 1460-Y)	63
Notice of (Case No. 1461-Y)	64
Order Extending Time to Docket Cause on	66
Order for Transmittal of Original Exhibits on	70
Stipulation for Consolidated Record on	65
Statement of Points on	101
Attorneys, Names and Addresses of	1
Complaint, Bill of (Case No. 1460-Y)	2
Complaint, Bill of (Case No. 1461-Y)	9

Index	Page
Conclusions of Law	59
Decision of Court (Case No. 1460-Y)	45
Decision of Court (Case No. 1461-Y)	46
Designation of Contents of Record on Appeal, Stipulated (District Court)	68
Designation of Contents of Record on Appeal, Stipulated (Circuit Court of Appeals)	103
Findings of Fact and Conclusions of Law	48
Judgments for Plaintiff	61
Names and Addresses of Attorneys of Record	1
Notice of Appeal (Case No. 1460-Y)	63
Notice of Appeal (Case No. 1461-Y)	64
Order Consolidating Cases, Minute	41
Order Extending Time to Docket Cause on Ap- peal	66
Order Transferring Case No. 1461 to Judge Yankwich	26
Order for Transmittal of Original Exhibits on Appeal	70
Statement of Points on Appeal	101
Stipulation Designating Contents of Record on Appeal (District Court)	68
Stipulation for Consolidated Record on Appeal	65
Stipulation of Facts (Case No. 1460-Y)	26
Stipulation of Facts (Case No. 1461-Y)	33

	Index	Page
Testimony		72
Exhibits for plaintiff:		
1—Notice re: Conveyance of assets		83
2—Decree of dissolution of Signal Gasoline Corporation		86
4—Consent fixing period of limitation upon assessment of income and profits tax		91
6—Power of attorney, dated Novem- ber 21, 1928		92
7—Power of attorney, dated Novem- ber 20, 1929		95
9—Assessment Certificate — Commis- sioner's Assessment List, dated Oc- tober 1, 1932		97
J—Assessment Certificate — Commis- sioner's Assessment List, dated September 10, 1932		88

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Assistant United States Attorney,
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Building,
Los Angeles, California. [1*]

*Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States in and
for the Southern District of California, Central
Division.

In Equity No. 1460-Y

UNITED STATES OF AMERICA,

Complainant,

vs.

SIGNAL OIL AND GAS COMPANY,

Defendant.

BILL OF COMPLAINT

To the Honorable Judges of the District Court of
the United States for the Southern District
of California:

The United States of America, complaining of
the above-named defendant, respectfully shows to
the Court:

I.

That at all times hereinafter mentioned complainant was and now is a corporation sovereign and body politic.

II.

That the defendant, Signal Oil and Gas Company, is a corporation organized under the laws of the State of Delaware on June 25, 1928, with offices, and doing business, in the city of Los Angeles and within the jurisdiction of this Court.

III.

That this is a suit in equity by the United States of America of a civil nature, arising under the laws

of the United States providing for internal revenue and the collection thereof brought at the direction of the Attorney General, and begun and prosecuted with the sanction, and at the request of, the Commissioner of Internal Revenue, to obtain relief of the defendant, the complainant having no clear, adequate or complete remedy at law, as will more properly appear in succeeding allegations. [2]

IV.

That the Signal Gasoline Company, a corporation now dissolved, was organized under the laws of the State of California on December 15, 1922, and thereafter engaged in the manufacture and sale of gasoline, with offices, and doing business, in the City of Los Angeles, and within the jurisdiction of this Court.

V.

That the Signal Gasoline Corporation, a corporation now dissolved, was organized under the laws of the State of California on February 11, 1924, and thereafter engaged in the manufacture and sale of gasoline, with offices, and doing business, in the City of Los Angeles, and within the jurisdiction of this Court.

VI.

That pursuant to an agreement between the Signal Gasoline Company and the Signal Gasoline Corporation dated May 1, 1924, all the assets and liabilities of the Signal Gasoline Company were

turned over to the Signal Gasoline Corporation, for 400,000 shares of stock of the Signal Gasoline Corporation, and on September 11, 1924, the Signal Gasoline Company was dissolved. The 400,000 shares received by the Signal Gasoline Company in exchange for its assets and liabilities were distributed to its stockholders.

VII.

That the Signal Gasoline Company, Incorporated, a corporation now dissolved, was organized under the laws of the State of California on December 30, 1924, and was as hereinafter indicated a holding company for the stock of the Signal Gasoline Corporation.

VIII.

That on July 31, 1928, the Signal Gasoline Company, Incorporated, owned 419,500 shares of the stock of the Signal Gasoline Corporation, which was 93.22% of the outstanding 450,005 shares of the Signal Gasoline Corporation; the balance of 30,505 shares of the stock outstanding of Signal Gasoline Corporation (4.23%) was owned by individual stockholders of the Signal Gasoline Company, Incorporated. [3]

IX.

That on August 1, 1928, the defendant, Signal Oil and Gas Company, acquired all the assets of the Signal Gasoline Company, Incorporated, which, as noted above, included 93.22% of the stock of

the Signal Gasoline Corporation, in exchange for stock of the Signal Oil and Gas Company.

X.

That on or about November 30, 1928, the defendant, Signal Oil and Gas Company, acquired the remaining 4.23% of the outstanding stock of the Signal Gasoline Corporation from the individual stockholders by exchange for stock of the Signal Oil and Gas Company.

XI.

That the Signal Gasoline Corporation was liquidated as of December 1, 1928, all its assets and liabilities being assigned to its sole stockholder, the defendant Signal Oil and Gas Company, and the Signal Gasoline Corporation was dissolved by court order on December 12, 1928.

XII.

That the income tax return of the now dissolved Signal Gasoline Company for the calendar year 1923 was filed with the Collector of Internal Revenue for the Sixth District of California on March 15, 1924, and its income tax return for the period ended September 11, 1924, was similarly filed on May 13, 1925.

XIII.

That on October 2, 1928, the Commissioner of Internal Revenue addressed a letter to the Signal Gasoline Corporation, as transferee of the Sig-

nal Gasoline Company, notifying it that a deficiency of \$468.33 for income taxes for the year 1923 had been determined.

XIV.

That on December 28, 1929, the Commissioner of Internal Revenue addressed a letter to the Signal Gasoline Corporation, as transferee of the Signal Gasoline Company, notifying it that a [4] deficiency of \$2,672.53 for income taxes for the period ended September 11, 1924, had been determined.

XV.

That thereafter petitions were filed with the Board of Tax Appeals for a redetermination of the proposed deficiency referred to in Paragraphs XIII and XIV above, and by an order entered on February 16, 1932, the Board of Tax Appeals held that the Signal Gasoline Corporation was liable for the sums indicated as transferee of the Signal Gasoline Company. (Signal Gasoline Corporation vs. Commissioner, 25 B. T. A. 532.)

XVI.

That no further appeal was taken and on September 10, 1932, the Commissioner of Internal Revenue assessed against the Signal Gasoline Corporation for the year 1923 a tax of \$468.33, plus interest of \$227.96, and for the period ended September 11, 1924, a tax of \$2,672.53, plus interest of \$1,200.70.

XVII.

That no part of the above taxes with interest so assessed for the year 1923 and for the period ended September 11, 1924, has been paid.

XVIII.

That by reason of the dissolution of the Signal Gasoline Corporation and the distribution of all its assets to the defendant, its sole stockholder, the Signal Gasoline Corporation was and is left without money, assets or property of any kind with which to pay said taxes due the United States.

XIX.

That the net assets which were acquired by the defendant Signal Oil and Gas Company, as sole stockholder of the Signal Gasoline Corporation, as heretofore shown, were in excess of the amount of the above-mentioned taxes with interest for the year 1923 and for the period ended September 11, 1924, and in excess of the amount for which recovery is sought herein. [5]

XX.

That due demand for the payment of said taxes with interest has been made upon the Signal Oil and Gas Company, but said demand has not been complied with and the taxes remain unpaid.

Wherefore, in consideration of the premises and the facts heretofore stated, the complainant comes before the Court and prays:

1. That the Honorable Court order, adjudge and decree that the defendant, Signal Oil and Gas Company, be accountable to complainant and liable for the aforesaid taxes in the sum of \$4,569.52, with interest from September 10, 1932, and that said defendant, Signal Oil and Gas Company be ordered to pay to complainant said unpaid taxes with interest.

2. That this Honorable Court order, adjudge and decree that the assets of the Signal Gasoline Corporation which were transferred to the defendant, Signal Oil and Gas Company, constitute a trust fund for the payment of the aforesaid taxes assessed against the Signal Gasoline Corporation, and that the defendant, Signal Oil and Gas Company, shall account to this Court for the aforesaid trust property, and the fund aforesaid be applied to the payment of the said taxes.

3. That the complainant have such other and further relief, general and special, as may appear to the Court to be just and equitable, as well as a decree for costs.

And may it please the Court to grant unto said complainant a writ of subpoena of the United States of America issued out of and under the seal of this Honorable Court, directed to the above-named defendant, and commanding it on a day certain and under certain penalties therein expressed, personally to appear before this Honorable Court, then and there to answer all and singular the premises, and to stand to and perform and abide by such orders, directions and decrees

as may be made against it in the premises, and complainant will ever pray.

BEN HARRISON,

United States Attorney.

E. H. MITCHELL,

Assistant United States Attorney.

ARMOND MONROE JEWELL,

Assistant United States Attorney.

By ARMOND MONROE JEWELL,
Assistant United States Attorney.

[Endorsed]: Filed Sep. 9, 1938. [6]

In the District Court of the United States in and
for the Southern District of California, Cen-
tral Division.

Equity No. 1461-RJ

UNITED STATES OF AMERICA,

Complainant.

vs.

SIGNAL OIL AND GAS COMPANY,

Defendant.

BILL OF COMPLAINT

To the Honorable Judges of the District Court of
the United States for the Southern District of
California:

The United States of America, complaining of
the defendant, respectfully shows to the Court:

I.

That at all times hereinafter mentioned complainant was and now is a corporation sovereign and body politic.

II.

That the defendant, Signal Oil and Gas Company is a corporation organized under the laws of the State of Delaware on June 25, 1928, with offices, and doing business, in the city of Los Angeles, and within the jurisdiction of this Court.

III.

That this is a suit in equity by the United States of America of a civil nature, arising under the laws of the United States providing for internal revenue and the collection thereof, brought at the direction of the Attorney General, and begun and prosecuted with the sanction and at the request of the Commissioner of Internal Revenue, to obtain relief of the defendant, the complainant having no clear, adequate or complete remedy at law, as will more properly appear in succeeding allegations.

[7]

IV.

That the Signal Gasoline Corporation, a corporation now dissolved, was organized under the laws of the State of California on February 11, 1924, and thereafter engaged in the manufacture and sale of gasoline, with offices and doing business in the City of Los Angeles and within the jurisdiction of this court.

V.

That the Signal Gasoline Company, Incorporated, a corporation, now dissolved, was organized under the laws of the State of California on December 30, 1924, and was as hereinafter indicated a holding company for the stock of the Signal Gasoline Corporation.

VI.

That on July 31, 1928, the Signal Gasoline Company, Incorporated, owned 419,500 shares of the stock of the Signal Gasoline Corporation, which was 93.22% of the outstanding 450,005 shares of the Signal Gasoline Corporation; the balance of 30,505 shares of the Signal Gasoline Corporation (4.23%) was owned by individual stockholders.

VII.

That on August 1, 1928, the defendant, Signal Oil and Gas Company, acquired all the assets of the Signal Gasoline Company, Incorporated, which, as noted above, included 93.22% of the stock of the Signal Gasoline Corporation, in exchange for stock of the Signal Oil and Gas Company.

VIII.

That on or about November 30, 1928, the defendant, Signal Oil and Gas Company acquired the remaining 4.23% of the outstanding stock of the Signal Gasoline Corporation from the individual stockholders of the Signal Gasoline Com-

pany, Incorporated, by exchange for stock of the Signal Oil and Gas Company.

IX.

That the Signal Gasoline Corporation was liquidated as of December 1, 1928, all its assets and liabilities being assigned to [8] its sole stockholder, the defendant Signal Oil and Gas Company, and the Signal Gasoline Corporation was dissolved by court order on December 12, 1928.

X.

That the income tax return of the now dissolved Signal Gasoline Corporation for the period from February 11, 1924 (the date of its incorporation) to December 31, 1924 was filed with the Collector of Internal Revenue for the Sixth District of California on May 13, 1925. This period of time is hereinafter referred to as the year 1924.

XI.

That on December 3, 1928, the Signal Gasoline Corporation filed Form 872 extending the period for assessment for any deficiency in tax which might be assessed for the year 1924 until December 31, 1929.

XII.

That on December 28, 1929, the Commissioner of Internal Revenue addressed a letter to the Signal Gasoline Corporation notifying it, in accordance with Section 274 of the Revenue Act of 1926,

that a deficiency of \$14,137.05 for income taxes for the year 1924 had been determined. Said notice of deficiency also included a determination with respect to deficiencies in income taxes for the year 1925 and 1926 which are not here involved.

XIII.

That thereafter a petition was filed with the Board of Tax Appeals for a redetermination of the proposed deficiencies referred to in Paragraph XII above, and by an order entered on March 15, 1932, the Board of Tax Appeals determined that the asserted deficiencies were correct. (Signal Gasoline Corporation vs. Commissioner, 25 B. T. A. 861.)

XIV.

That no further appeal was taken with respect to the defi- [9] ciency asserted for the year 1924, and on October 1, 1932, the Commissioner of Internal Revenue assessed against the Signal Gasoline Corporation for the year 1924 a tax of \$14,137.05, plus interest of \$6,080.77.

XV.

That no part of the above tax with interest so assessed for the year 1924 has been paid.

XVI.

That by reason of the dissolution of the Signal Gasoline Corporation and the distribution of all its assets to the defendant, its sole stockholder, the Signal Gasoline Corporation was and is left with-

out money, assets or property of any kind with which to pay said tax due the United States.

XVII.

That the net assets which were acquired by the defendant, Signal Oil and Gas Company, as sole stockholder of the Signal Gasoline Corporation, as heretofore shown, were in excess of the above-mentioned tax with interest for the year 1924, and in excess of the amount for which recovery is sought herein.

XVIII.

That due demand for the payment of said tax with interest has been made upon the Signal Oil and Gas Company, but said demand has not been complied with and the tax remains unpaid.

Wherefore, in consideration of the premises and the facts heretofore stated, the complainant comes before the Court and prays:

1. That the Honorable Court order, adjudge and decree that the defendant Signal Oil and Gas Company be accountable to complainant and liable for the aforesaid tax in the sum of \$20,217.82 with interest from October 1, 1932, and that said defendant Signal Oil and Gas Company be ordered to pay to complainant said unpaid tax with interest. [10]

2. That this Honorable Court order, adjudge and decree that the assets of the Signal Gasoline Corporation, which were transferred to the defendant, Signal Oil and Gas Company, constitute a

trust fund for the payment of the aforesaid tax assessed against the Signal Gasoline Corporation, and that the defendant, Signal Oil and Gas Company shall account to this Court for the aforesaid trust property, and the fund aforesaid be applied to the payment of the said tax.

3. That the complainant have such other and further relief, general and special, as may appear to the Court to be just and equitable, as well as a decree for cost.

And may it please the Court to grant unto said complainant a writ of subpoena to the United States of America issued out of and under the seal of this Honorable Court, directed to the above-named defendant, and commanding it on a day certain and under certain penalties therein expressed, personally to appear before this Honorable Court, then and there to answer all and singular the premises, and to stand to and perform and abide by such orders, directions and decrees as may be made against it in the premises and complainant will ever pray.

BEN HARRISON,
United States Attorney.

E. H. MITCHELL,
Asst. United States Attorney.
ARMOND MONROE JEWELL,
Asst. United States Attorney.

By ARMOND MONROE JEWELL,
Attorneys for Plaintiff.

[Endorsed]: Filed Sep. 9, 1938. [11]

[Title of District Court and Cause—No. 1460-Y.]

ANSWER

To the Honorable Judges of the District Court of
the United States, for the Southern District
of California:

The defendant, Signal Oil and Gas Company, answering the bill of complaint on file herein, denies, admits and alleges as follows:

I.

Defendant admits the allegations contained in Paragraph I of the complaint.

II.

Defendant admits the allegations contained in Paragraph II of the complaint.

III.

Defendant has no information or belief as to the matters alleged in Paragraph III of the complaint, and upon such lack of information or belief, denies the allegations contained in Paragraph III of the complaint. [12]

IV.

Defendant admits the allegations contained in Paragraph IV of the complaint.

V.

Defendant admits the allegations contained in Paragraph V of the complaint.

VI.

Defendant denies the allegations contained in Paragraph VI of the complaint.

VII.

Defendant admits that Signal Gasoline Company, Incorporated, a corporation now dissolved, was organized under the laws of the State of California on December 30, 1924. Defendant denies the other allegations contained in Paragraph VII of the complaint.

VIII.

Defendant denies the allegations contained in Paragraph VIII of the complaint.

IX.

Defendant denies the allegations contained in Paragraph IX of the complaint.

X.

Defendant denies the allegations contained in Paragraph X of the complaint.

XI.

Defendant admits that Signal Gasoline Corporation was dissolved by court order on December 12, 1928, and denies the other allegations contained in Paragraph XI of the complaint. [13]

XII.

Defendant admits the allegations contained in Paragraph XII of the complaint.

XIII.

Defendant admits the allegations contained in Paragraph XIII of the complaint.

XIV.

Defendant denies the allegations contained in Paragraph XIV of the complaint, on the ground that Signal Gasoline Corporation was dissolved on December 12, 1928.

XV.

Defendant denies the allegations contained in Paragraph XV of the complaint, on the ground that Signal Gasoline Corporation was dissolved on December 12, 1928.

XVI.

Defendant admits that no further appeal was taken and denies the other allegations contained in Paragraph XVI of the complaint, on the ground that Signal Gasoline Corporation was dissolved on December 12, 1928.

XVII.

Defendant admits the allegations contained in Paragraph XVII of the complaint.

XVIII.

Defendant denies the allegations contained in Paragraph XVIII of the complaint. [14]

XIX.

Defendant denies the allegations contained in Paragraph XIX of the complaint.

XX.

Defendant denies that demand for the payment of said taxes, with interest, has been made on defendant, but admits that the taxes remain unpaid.

For a Second, Separate and Affirmative Defense,
Defendant Alleges as Follows:

I.

Defendant alleges that the complaint is barred by the statute of limitations.

II.

The time within which the complainant could sue in equity under the trust fund theory was six (6) years from and after the date the tax had been assessed against the taxpayer, Signal Gasoline Company.

III.

The additional tax demanded in the complaint was never assessed against the taxpayer, Signal Gasoline Company.

IV.

The time for bringing suit against alleged transferees of the assets of Signal Gasoline Company expired on March 15, 1930, and May 13, 1931, with respect to the taxes of Signal Gasoline Company for 1923 and 1924, respectively. [15]

V.

The complaint was filed on September 9, 1938, and is barred by the statute of limitations.

For a Third, Separate and Affirmative Defense,
Defendant Alleges as Follows:

I.

That the complaint is barred by the statute of limitations.

II.

That the period within which the complainant could bring suit against an alleged transferee of the assets of Signal Gasoline Company was six (6) years from and after the dates of the assessment of the additional tax against Signal Gasoline Company, or from the dates of the filing of the returns. No assessment of the additional tax was made against Signal Gasoline Company and the returns were filed on March 15, 1924, and May 13, 1925, respectively, for the years 1923 and 1924, and the time for suing alleged transferees expired on March 15, 1930, and May 13, 1931, respectively.

III.

That the purported assessment against Signal Gasoline Corporation for the taxes of Signal Gasoline Company for 1923 and 1924 allegedly made on September 10, 1932, does not start a new six-year period in which to sue an alleged transferee, as the purported assessment made on Signal Gasoline Corporation was absolutely null and void, as that corporation had been dissolved on December 12, 1928, and was not in existence at the date of the alleged assessment. [16]

IV.

The complaint herein was filed on September 9, 1938, and the period for filing the same having expired on March 15, 1930, and May 13, 1931, respectively, for the taxes for the years 1923 and 1924, the complaint herein is barred by the statute of limitations.

Wherefore, defendant prays that complainant take nothing by its complaint, and that defendant be allowed its costs of suit herein.

JOSEPH D. PEELER,

MELVIN D. WILSON,

Attorneys for Defendant, Signal Oil
and Gas Company.

[Verified]

[Endorsed]: Filed Sep. 30-1938. [17]

[Title of District Court and Cause—No. 1461-RJ.]

ANSWER

To the Honorable Judges of the District Court of
the United States, for the Southern District
of California:

That defendant, Signal Oil and Gas Company,
answering the bill of complaint on file herein, de-
nies, admits and alleges as follows:

I.

Defendant admits the allegations contained in
Paragraph I of the complaint.

II.

Defendant admits the allegations contained in Paragraph II of the complaint.

III.

Defendant has no information or belief as to the matters alleged in Paragraph III of the complaint, and, upon such lack of information or belief, denies the allegations contained in Paragraph III of the complaint. [18]

IV.

Defendant admits the allegations contained in Paragraph IV of the complaint.

V.

Defendant admits that Signal Gasoline Company, Incorporated, a corporation now dissolved, was organized under the laws of the State of California on December 30, 1924, and defendant denies the other allegations contained in Paragraph V of the complaint.

VI.

Defendant denies the allegations contained in Paragraph VI of the complaint.

VII.

Defendant denies the allegations contained in Paragraph VII of the complaint.

VIII.

Defendant denies the allegations contained in paragraph XIII of the complaint.

IX.

Defendant admits that Signal Gasoline Corporation was dissolved by court order on December 12, 1928, and denies all of the other allegations contained in Paragraph IX of the complaint.

X.

Defendant admits the allegations contained in Paragraph X of the complaint. [19]

XI.

Defendant denies the allegation contained in Paragraph XI of the complaint.

XII.

Defendant denies the allegations contained in the first sentence of Paragraph XII of the complaint, on the ground that Signal Gasoline Corporation was dissolved on December 12, 1928.

XIII.

Defendant denies the allegations contained in Paragraph XIII of the complaint on the ground that Signal Gasoline Corporation was dissolved on December 12, 1928.

XIV.

Defendant admits that no further appeal was taken with respect to the deficiency asserted for the year 1924, and denies the other allegations contained in Paragraph XIV of the complaint on the ground that Signal Gasoline Corporation was dissolved on December 12, 1928.

XV.

Defendant admits the allegations contained in Paragraph XV of the complaint.

XVI.

Defendant denies the allegations contained in Paragraph XVI of the complaint.

XVII.

Defendant denies the allegations contained in Paragraph XVII of the complaint. [20]

XVIII.

Defendant denies that demand for the payment of said tax, with interest, has been made upon Signal Oil and Gas Company. Defendant admits that the taxes remain unpaid.

For a Second, Separate and Affirmative Defense,
Defendant Alleges as Follows:

I.

Defendant alleges that the complaint is barred by the statute of limitations.

II.

The time within which the complainant could sue in equity under the trust fund theory was six (6) years from and after the date the tax had been assessed against the taxpayer, Signal Gasoline Corporation.

III.

The additional tax demanded in the complaint was never assessed against the taxpayer, Signal Gasoline Corporation, as said corporation was dissolved on December 12, 1928, and the alleged assessment was not purported to have been made until October 1, 1932, and since there was no Signal Gasoline Corporation then in existence, the alleged assessment was void.

IV.

The time for bringing suit against the alleged transferees of the assets of Signal Gasoline Corporation with respect to the taxes of Signal Gasoline Corporation for the year 1924, expired on May 13, 1931, which was six (6) years after the return was filed. [21]

V.

The complaint herein was filed on September 9, 1938, and is barred by the statute of limitations.

Wherefore, defendant prays that the complainant take nothing by its complaint on file herein, and that defendant be allowed its costs of suit herein.

JOSEPH D. PEELER,

MELVIN D. WILSON,

Attorneys for Defendant Signal Oil
and Gas Company.

[Verified]

[Endorsed]: Filed Sep. 30-1938. [22]

[Title of District Court and Cause—No. 1461-RJ.]

ORDER TRANSFERRING CASE PURSUANT
TO RULE 19

Good cause appearing therefor, It Is Hereby Ordered: That the above-entitled cause be transferred to the Calendar of Judge Yankwich for further proceedings herein.

Los Angeles, California, February 8, 1939.

RALPH E. JENNEY

Judge

LEON R. YANKWICH

Judge

[Endorsed]: Filed Feb. 17, 1939. [23]

[Title of District Court and Cause — No. Eq.
1460-Y.]

STIPULATION.

It Is Hereby Stipulated, by and between the parties hereto, through their respective counsel that this cause may be tried upon the allegations contained in the complaint, and admitted in the answer, and upon the facts stated in this stipulation, and upon such further evidence as either party may introduce at the trial not contradictory thereto.

I.

That this is a suit in equity by the United States of America of a civil nature, arising under the laws

of the United States providing for internal revenue and the collection thereof, brought at the direction of the Attorney General and begun and prosecuted with the sanction and at the request of the Commissioner of Internal Revenue to obtain relief of the defendant; and that the plaintiff has no clear, adequate or complete remedy at law.

II.

That pursuant to an agreement between the Signal Gasoline Company and the Signal Gasoline Corporation dated May 1, 1924, all the assets and liabilities of the Signal Gasoline Company were turned over to the Signal Gasoline Corporation for 400,000 shares of stock of the Signal Gasoline Corporation, and on September 11, 1924, [24] the Signal Gasoline Company was dissolved; the 400,000 shares received by the Signal Gasoline Company in exchange for its assets and liabilities were distributed to its stockholders; that accompanying this stipulation is a true copy of said Agreement which will be offered into evidence and, with leave of Court, marked "Plaintiff's Exhibit A", and filed herewith.

III.

That at all times herein mentioned the Signal Gasoline Company, Inc., a corporation now dissolved, was prior to its dissolution a holding company for the stock of the Signal Gasoline Corporation.

IV.

That on July 31, 1928, the Signal Gasoline Company, Incorporated, owned 419,500 shares of the stock of the Signal Gasoline Corporation, which was 93.22% of the outstanding 450,005 shares of the Signal Gasoline Corporation; the balance of 30,505 shares of the stock outstanding of the Signal Gasoline Corporation (4.23%) was owned by individual stockholders of the Signal Gasoline Company, Incorporated.

V.

That on August 1, 1928, the defendant, Signal Oil and Gas Company, acquired all the assets of the Signal Gasoline Company, Incorporated, which, as noted above, included 93.22% of the stock of the Signal Gasoline Corporation, in exchange for stock of the Signal Oil and Gas Company.

VI.

That on or about November 30, 1928, the defendant, Signal Oil and Gas Company, acquired the remaining 4.23% of the outstanding stock of the Signal Gasoline Corporation [25] from the individual stockholders by exchange for stock of the Signal Oil and Gas Company.

VII.

That the Signal Gasoline Corporation was liquidated as of December 1, 1928, and all its assets and liabilities distributed, as set forth in the stipulation in *United States v. Signal Oil & Gas Co.*, No. Equity 1461-Y.

VIII.

That accompanying this stipulation are true copies of the corporation income tax returns of the Signal Gasoline Company for the calendar year 1923, the amended return of the said company for the same year, the tentative return for the year 1924, and the final return for the year 1924, which will be offered into evidence by plaintiff and with leave of Court marked "Plaintiff's Exhibits B, C, D, and E, respectively, and filed herein.

IX.

That on October 2, 1928, and on December 28, 1929, the Commissioner of Internal Revenue addressed and mailed a letter to the Signal Gasoline Corporation setting forth certain transferee deficiencies; that true and certified photostatic copies of said letters accompany this stipulation which will be offered into evidence by plaintiff and with leave of Court marked "Plaintiff's Exhibits F and G", respectively, and filed herein.

X.

That thereafter petitions in the name of the Signal Gasoline Corporation were filed with the Board of Tax Appeals for a redetermination of the deficiencies so proposed; that said proceedings were docketed under Numbers 41532 and 47620, and on February 16, 1932, the Board of Tax Appeals purported to affirm the ruling of the [26] Commissioner in an opinion reported in 25 B. T. A. 532; that ac-

companying this stipulation are true and certified copies of the petitions and decisions in Board Docket No. 41532, and Board Docket No. 47620 which will be offered into evidence by plaintiff and with leave of Court marked "Plaintiff's Exhibits H and I", respectively, and filed herein.

XI.

That on September 10, 1932, the Commissioner of Internal Revenue purported to assess the Signal Gasoline Corporation as a transferee for the year 1923 a tax of \$468.33, plus interest of \$227.96; and for the period ended September 11, 1924, a tax of \$2,672.53, plus interest of \$1200.70; that a true certified photostatic copy of the assessment list accompanies this stipulation and will be offered into evidence by plaintiff and with leave of Court marked "Plaintiff's Exhibit J", and filed herein.

XII.

That by reason of the dissolution of the Signal Gasoline Corporation, and the distribution of its assets as hereinabove stated, the Signal Gasoline Corporation was and is left without money, assets or property of any kind with which to pay the taxes due the United States.

XIII.

That the net assets which were acquired by the defendant Signal Oil and Gas Company, as sole stockholder of the Signal Gasoline Corporation, as heretofore shown, were far in excess of the amount

of the above mentioned taxes with interest for the year 1923, and for the period ended September 11, 1924, and in excess of the amount for which recovery is sought herein. [27]

XIV.

That due demand for the payment of said taxes, with interest, has been made upon the Signal Oil and Gas Company.

XV.

That in the proceedings before the Board of Tax Appeals in Docket Numbers 41532 and 47620, no substitution of parties was ever made, and no motion for such substitution was ever made by either of the parties.

XVI.

That no assessment was ever made against the Signal Oil and Gas Company for the said 1923 and 1924 tax liabilities of the Signal Gasoline Company; that no assessment was ever made against the Signal Gasoline Company for the said 1924 tax liability of the Signal Gasoline Company; but that an assessment against the Signal Gasoline Company was made on July 3, 1931, in the amount of \$468.33, plus interest for its said tax liability for the calendar year 1923.

XVII.

That accompanying this stipulation is a true and certified photostat copy of a letter to the Commissioner of Internal Revenue dated January 20, 1932, which will be offered into evidence by the plaintiff

and with leave of Court marked "Plaintiff's Exhibit K", and filed herein.

XVIII.

That at all times herein considered substantially the same persons were Officers and Directors or statutory trustees of the Signal Gasoline Corporation as were the Officers and Directors of Signal Oil and Gas Company and Officers and Directors of the Signal Gasoline Company, Incorporated.

XIX.

That it is the intent of the parties hereto that [28] all of the documents and exhibits herein referred to shall be considered as true copies thereof, that all the signatures thereon are true, that each of the documents shall speak for itself in its legal effect, and that all of the acts of the agents whose names appear on said documents were authorized; save and except, however, that nothing herein shall prevent the defendant from attacking the validity or authority of any of the acts or documents herein referred to, by way of objections to the admissibility of evidence offered at the trial or otherwise, on the grounds that the respective corporate entities were not in existence at the time of the performance of said acts or the execution of said documents, or otherwise.

XX.

That all of the facts, admitted in the pleadings or set forth in the stipulation or found in the ex-

hibits offered, in the case of United States vs. Signal Oil and Gas Company, No. Equity 1461-Y, shall apply herein with the same force and effect and subject to the same objections and reservations, as if pleaded, admitted or proven herein.

Dated: January 16, 1940.

BEN HARRISON,
U. S. Attorney,
E. H. MITCHELL,
Asst. U. S. Attorney
ARMOND MONROE JEWELL,
Asst. U. S. Attorney,
By ARMOND MONROE JEWELL,
Attorneys for Plaintiff.

JOSEPH D. PEELER,
MELVIN D. WILSON,
BY MELVIN D. WILSON,
Attorneys for Defendant.

[Endorsed]: Filed Jan. 16, 1940. [29]

[Title of District Court and Cause — No. Eq.
1461-Y.]

STIPULATION

It Is Hereby Stipulated and Agreed by and between the parties hereto, through their respective counsel, that this cause may be tried upon the allegations contained in the complaint and admitted in the answer, upon the facts stated in this stipulation,

and upon such further evidence as either party may introduce at the trial not contradictory thereto.

I.

That this is a suit in equity by the United States of America of a civil nature arising under the laws of the United States providing for internal revenue and the collection thereof, brought at the direction of the Attorney General and begun and prosecuted with the sanction and at the request of the Commissioner of Internal Revenue to obtain relief of the defendant; and that the plaintiff has no clear, adequate, or complete remedy at law.

II.

That at all times herein mentioned the Signal Gasoline Company, Incorporated, a corporation now dissolved, was prior to its dissolution a holding company for the stock of the Signal Gasoline Corporation.

III.

That on July 31, 1928, the Signal Gasoline Company, [30] Incorporated, owned 419,500 shares of the stock of the Signal Gasoline Corporation, which was 93.22% of the outstanding 450,005 shares of the Signal Gasoline Corporation; the balance of 30,505 shares of the Signal Gasoline Corporation (4.23%) was owned by individual stockholders of the Signal Gasoline Company, Incorporated.

IV.

That on August 1, 1928, the defendant, Signal Oil and Gas Company, acquired all the assets of

the Signal Gasoline Company, Incorporated, which, as noted above, included 93.22% of the stock of the Signal Gasoline Corporation, in exchange for stock of the Signal Oil and Gas Company.

V.

That on or about November 30, 1928, the defendant, Signal Oil and Gas Company, acquired the remaining 4.23% of the outstanding stock of the Signal Gasoline Corporation from the individual stockholders of the Signal Gasoline Company, Incorporated, by exchange for stock of the Signal Oil and Gas Company.

VI.

That the Signal Gasoline Corporation was liquidated as of December 1, 1928, and all of its assets and liabilities were assigned in accordance with a certain instrument of conveyance and the Decree of Dissolution of the Superior Court, true copies of which accompany this stipulation and will be offered into evidence by plaintiff and with leave of the Court marked "Plaintiff's Exhibits 1 and 2", and filed herein.

VII.

That accompanying this stipulation is a true copy of the income tax return of the Signal Gasoline Corporation [31] for the calendar year 1924, which will be offered into evidence and with leave of Court marked "Plaintiff's Exhibit 3", and filed herein.

VIII.

That on December 3, 1928, the Signal Gasoline Corporation signed and filed Form 872, which is entitled "Consent Fixing Period of Limitation upon Assessment of Income and Profits Tax"; that a true and certified photostatic copy of said form accompanies this stipulation, which will be offered into evidence by plaintiff and with leave of Court marked "Plaintiff's Exhibit 4", and filed herein.

IX.

That on December 28, 1929, the Commissioner of Internal Revenue addressed and mailed a letter to the Signal Gasoline Corporation, a true and certified photostatic copy of which accompanies this stipulation, and which will be offered into evidence by plaintiff and with leave of Court marked "Plaintiff's Exhibit 5", and filed herein.

X.

That accompanying this stipulation are true and certified photostatic copies of powers of attorney dated November 21, 1928 and November 21, 1929 in the name of Signal Gasoline Corporation; that these will be offered into evidence by plaintiff and with leave of Court marked respectively "Plaintiff's Exhibits 6 and 7", and filed herein.

XI.

That on or about February 24, 1930, a petition was filed with the Board of Tax Appeals for a redetermination of the deficiencies proposed in Plain-

tiff's Exhibit 5 above referred to; that said proceeding was given [32] Docket No. 47621; that a true copy of said petition accompanies this stipulation and will be offered into evidence by plaintiff and with leave of Court marked "Plaintiff's Exhibit 8", and filed herein; that by an order entered on March 15, 1932, the Board of Tax Appeals purported to determine that the asserted deficiencies were correct; and that said opinion of the Board of Tax Appeals is reported in 25 B. T. A. 861.

XII.

That on October 1, 1932, the Commissioner of Internal Revenue purported to assess the Signal Gasoline Corporation for the year 1924, a tax of \$14,137.05, plus interest of \$6,080.77; that a true and certified photostatic copy of the assessment accompanies this stipulation, which will be offered into evidence by plaintiff and with leave of Court marked "Plaintiff's Exhibit 9", and filed herein.

XIII.

That by reason of the dissolution of the Signal Gasoline Corporation and the distribution of all of its assets as above set forth, the Signal Gasoline Corporation was and is left without money, assets, or property of any kind with which to pay the said tax and interest due to the United States.

XIV.

That the net assets which were acquired by the defendant Signal Oil and Gas Company, as sole

stockholder of the Signal Gasoline Corporation, as heretofore shown, were far in excess of the above mentioned tax with interest for the year 1924, and in excess of the amount for which recovery is sought herein. [33]

XV.

That due demand for the payment of said tax with interest has been made upon the Signal Oil and Gas Company.

XVI.

That accompanying this stipulation are true copies of the following, which will be offered into evidence by plaintiff and, with leave of Court, marked as Plaintiff's Exhibits and filed as follows:

(a) Letter from F. O. Graves to the Commissioner of Internal Revenue, dated December 3, 1928—"Plaintiff's Exhibit 10";

(b) Protest purportedly from the Signal Gasoline Corporation to the Internal Revenue Agent in Charge, dated November 20, 1929—"Plaintiff's Exhibit 11";

(c) Letter to the Commissioner of Internal Revenue in the name of the Signal Gasoline Corporation, Los Angeles, California, dated January 20, 1932—"Plaintiff's Exhibit 12";

(d) Letter to the Commissioner of Internal Revenue in the name of the Signal Gasoline Company, Incorporated, dated January 20, 1932—"Plaintiff's Exhibit 13";

(e) Sixty day letter, dated March 30, 1931, to the Signal Gasoline Corporation from the Commis-

sioner of Internal Revenue with certain applicable portions of the statement therein attached—"Plaintiff's Exhibit 14";

(f) Applicable portions of revenue agent's report, dated as of August 26, 1930—"Plaintiff's Exhibit 15";

(g) Letter to Collector of Internal Revenue at Los Angeles, dated July 27, 1931, signed by J. H. Rounsavell—"Plaintiff's Exhibit 16";

(h) Offers in compromise in the name of Signal Gasoline Corporation under the respective dates of October [34] 21, 1932, and January 23, 1933—"Plaintiff's Exhibits 17 and 18";

(i) Income tax return of the Signal Gasoline Company, Incorporated, and Subsidiaries for the period of January 1 to July 31, 1928—"Plaintiff's Exhibit 19";

(j) Corporation income tax return of the Signal Oil and Gas Company, and Subsidiaries for the period ended December 31, 1928—"Plaintiff's Exhibit 20"; and

(k) Petition accompanying application of the Signal Oil and Gas Company to issue stock, filed July 23, 1928, and application filed October 6, 1928—"Plaintiff's Exhibit 21".

XVII.

That in the proceedings before the Board of Tax Appeals in Docket Number 47621, no substitution of parties was ever made, and no motion for such substitution was ever made by either of the parties.

XVIII.

That at all times herein considered substantially the same persons were Officers and Directors or statutory trustees of the Signal Gasoline Corporation as were the Officers and Directors of Signal Oil and Gas Company and Officers and Directors of Signal Gasoline Company, Incorporated.

XIX.

That it is the intent of the parties hereto that all of the documents and exhibits herein referred to shall be considered as true copies thereof, that all the signatures thereon are true, that each of the documents shall speak for itself in its legal effect, and that all of the acts of the agents whose names appear on said documents were authorized; save and except, however, that nothing herein shall prevent the defendant from attacking [35] the validity or authority of any of the acts or documents herein referred to, by way of objections to the admissibility of evidence offered at the trial or otherwise, on the grounds that the respective corporate entities were not in existence at the time of the performance of said acts or the execution of said documents, or otherwise.

XX.

That all of the facts, admitted in the pleadings or set forth in the stipulation, or found in the exhibits offered, in the case of United States vs. Signal Oil and Gas Company, No. Equity 1460-Y, shall apply herein with the same force and effect and

subject to the same objections and reservations, as if pleaded, admitted or proven herein.

Dated: January 16, 1940.

BEN HARRISON,
U. S. Attorney,
E. H. MITCHELL,
Asst. U. S. Attorney,
ARMOND MONROE JEWELL,
Asst. U. S. Attorney,
By ARMOND MONROE JEWELL
Attorneys for Plaintiff.

JOSEPH D. PEELER
MELVIN D. WILSON
By MELVIN D. WILSON
Attorneys for Defendant.

[Endorsed]: Filed Jan. 16, 1940. [36]

At a stated term, to wit: The September Term, A. D. 1939 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 16th day of January in the year of our Lord one thousand nine hundred and forty.

Present:

The Honorable: Leon R. Yankwich, District Judge.

[Title of Cause—No. 1460-Y Equity.]

[Title of Cause—No. 1461-Y Equity.]

These causes coming on for trial; A. M. Jewell, Assistant U. S. Attorney, appearing as counsel for the Government; Melvin D. Wilson, Esq., appearing as counsel for the defendant; and Arthur Edwards, court reporter, being present:

It is ordered that these causes be consolidated.

Attorney Wilson makes opening statement in behalf of the defendant.

Pursuant to stipulation, amended and supplemental answer in Case No. 1461 is ordered filed, and stipulation of facts is ordered filed in each case.

* * * * *

Stipulation is entered into by counsel re assessments. Both sides rest.

It is ordered that these consolidated causes be submitted on briefs to be filed 30 x 60 x 15. [37]

[Title of District Court and Cause.—No. 1461-RJ.]

AMENDED AND SUPPLEMENTAL ANSWER

To the Honorable Judges of the District Court of the United States, for the Southern District of California:

The defendant, Signal Oil and Gas Company, having obtained permission of the Court therefor,

makes this amended and supplemental answer to the bill of complaint on file herein and, in so doing, denies, admits and alleges as follows:

I.

Defendant adopts, repeats and incorporates herein by reference Paragraphs I to XVIII of its original answer on file herein, as its first defense.

II.

Defendant adopts, repeats and incorporates herein by reference Paragraphs I to V of its second, separate and affirmative defense set out in its original answer on file herein, as its second defense in this amended and supplemental answer.

[38]

For a Third, Separate and Affirmative Defense,
Defendant Alleges as Follows:

I.

Defendant alleges that the bill of complaint is barred by the statute of limitations.

II.

That the time for bringing suit against the alleged transferees of the assets of Signal Gasoline Corporation with respect to taxes of Signal Gasoline Corporation for the year 1924, was six years from the time the return was filed, namely six years from May 13, 1925, or six years from the time the tax was validly assessed against the taxpayer, Signal Gasoline Corporation.

III.

Signal Gasoline Corporation, having been dissolved in December of 1928, and the purported assessment not having been made until October 1, 1932, it was invalid and null and void as to Signal Gasoline Corporation.

IV.

If the assessment made on October 1, 1932, was valid, it must of necessity have been made against the trustee of the dissolved Signal Gasoline Corporation, who, upon dissolution, received its assets for the purpose of paying its debts and collecting its accounts. Such trustees constitute the first transferees of the assets of Signal Gasoline Corporation, but a valid assessment against them would not give the plaintiff six years within which to sue subsequent transferees of the assets of Signal Gasoline Corporation. [39]

V.

The suit herein, not having been brought by May 13, 1931, was barred by the statute of limitations.

Wherefore, defendant prays that plaintiff take nothing by its complaint on file herein, and that the defendant be allowed its costs of suit herein.

JOSEPH D. PEELER,

MELVIN D. WILSON,

Attorneys for Defendant Signal Oil and Gas Company.

(Verified)

[Endorsed]: Filed Jan. 16, 1940. [40]

[Title of District Court and Cause.—No. 1460-Y.]

MINUTE ORDER

This cause having been heard upon the issues raised by the Complaint and the Answer, and a stipulation of facts and evidence, oral and documentary, having been introduced, and the cause having been submitted to the Court for decision, and the Court having considered the evidence and the law and the arguments and briefs of counsel, now finds in favor of the plaintiffs and orders that the plaintiff do have and recover of the defendant in the sum of \$4,569.52, with interest thereon from September 10, 1932.

As a guide to counsel in the preparation of findings, the Court states the following conclusions upon the issues raised in this and the companion case this day decided also. (1461-Y)

The Court is of the view that under the authority of *McPherson vs. Commissioner of Internal Revenue*, 9 Cir., 1932, 54 F(2) 751, the deficiency assessment was in all respects valid. The deficiency assessment against the Signal Gasoline Corporation was not an assessment against its directors as transferees of the assets. It was an assessment against it for tax liability incurred during its corporate existence. This being the case, the defendants are not in a position to invoke the doctrine of *United States vs. Continental National Bank and Trust [41] Company*, 1939, 305 U. S. 398. In other words, the Court is of the view that we are not dealing

here with the transferee of a transferee and that the actions in this and the companion case were timely and are not barred by the Statute of Limitations.

Findings and judgment to be prepared by counsel for the plaintiff under Local Rule 8.

Dated this 27th day of July, 1940.

Counsel notified. [42]

[Title of District Court and Cause.—No. 1461-Y.]

MINUTE ORDER

This cause having been heard upon the issues raised by the Complaint and the Answer, and a stipulation of facts and evidence, oral and documentary, having been introduced, and the cause having been submitted to the Court for decision, and the Court having considered the evidence and the law and the arguments and briefs of counsel, now finds in favor of the plaintiffs and orders that the plaintiff do have and recover of the defendant in the sum of \$20,217.82, with interest thereon from September 10, 1932.

As a guide to counsel in the preparation of findings, the Court states the following conclusions upon the issues raised in this and the companion case this day decided also. (1460-Y)

The Court is of the view that under the authority of *McPherson vs. Commissioner of Internal Revenue*, 9 Cir., 1932, 54 F(2) 751, the deficiency

assessment was in all respects valid. The deficiency assessment against the Signal Gasoline Corporation was not an assessment against its directors as transferees of the assets. It was an assessment against it for tax liability incurred during its corporate existence. This being the case, the defendants are not in a position to invoke the doctrine of *United States vs. Continental National Bank and Trust Company*, 1939, 305 U. S. 398. In other [43] words, the Court is of the view that we are not dealing here with the transferee of a transferee and that the actions in this and the companion case were timely and are not barred by the Statute of Limitations.

Findings and judgment to be prepared by counsel for the plaintiff under Local Rule 8.

Dated this 27th day of July, 1940.

Counsel notified. [44]

In the District Court of the United States in and
for the Southern District of California, Cen-
tral Division.

No. Eq. 1460-Y

UNITED STATES OF AMERICA,

Plaintiff.

vs.

SIGNAL OIL AND GAS COMPANY,

Defendant.

No. Eq. 1461-Y

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SIGNAL OIL AND GAS COMPANY,

Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled cases having come on for trial on the 16th day of January, 1940, before the Honorable Leon R. Yankwich, United States District Judge, sitting without a jury, plaintiff being represented by the United States Attorney, and Edward H. Mitchell, Assistant United States Attorney, by Armond Monroe Jewell, Assistant United States Attorney, and defendant being represented by Joseph D. Peeler, Esq., and Melvin D. Wilson, Esq., by Melvin D. Wilson, Esq., and a stipulation

of facts having been filed and the court having ordered the consolidation of the above entitled cases for the purpose of trial, and documentary evidence having been offered on behalf of the plaintiff, the court now makes its Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

I.

That these are suits in equity by the United States of America of a civil nature arising under the laws of the United States providing for internal revenue and the collection thereof, brought on [45] September 9, 1938, at the direction of the Attorney General and begun and prosecuted with the sanction and at the request of the Commissioner of Internal Revenue to obtain relief of the defendant; and that the plaintiff has no clear, adequate, or complete remedy at law.

II.

That pursuant to and in accordance with an agreement between the Signal Gasoline Company, a California corporation, and the Signal Gasoline Corporation, a California corporation, dated May 1, 1924, all the assets of the Signal Gasoline Company were turned over to the Signal Gasoline Corporation for 400,000 shares of stock of the Signal Gasoline Corporation, and on September 11, 1924, the Signal Gasoline Company was dissolved; the 400,000 shares received by the Signal Gasoline

Company in exchange for its assets and liabilities were distributed to its stockholders; that "Plaintiff's Exhibit A" is a true copy of the said agreement.

III.

That at all times herein mentioned the Signal Gasoline Company, Incorporated, a corporation now dissolved, was prior to its dissolution a holding company for the stock of the Signal Gasoline Corporation.

IV.

That on July 31, 1928, the Signal Gasoline Company, Incorporated, owned 419,500 shares of the stock of the Signal Gasoline Corporation, which was 93.22% of the outstanding 450,005 shares of the Signal Gasoline Corporation; the balance of 30,505 shares of the stock outstanding of the Signal Gasoline Corporation (4.23%) was owned by individual stockholders of the Signal Gasoline Company, Incorporated.

V.

That on August 1, 1928, the defendant, Signal Oil and Gas Company, acquired all the assets of the Signal Gasoline Company, Incorporated, which, as noted above, included 93.22% of the stock of the Signal Gasoline Corporation, in exchange for stock of the Signal [46] Oil and Gas Company.

VI.

That on or about November 30, 1928, the defendant, Signal Oil and Gas Company, acquired

the remaining 4.23% of the outstanding stock of the Signal Gasoline Corporation from the individual stockholders of the Signal Gasoline Company, Incorporated, by exchange for stock of the Signal Oil and Gas Company.

VII.

That the Signal Gasoline Corporation was liquidated as of December 1, 1928, and all of its assets and liabilities were assigned in accordance with a certain instrument of conveyance and the Decree of Dissolution of the Superior Court; that plaintiff's Exhibits 1 and 2, respectively, are true copies of the said instrument of conveyance and the Decree of Dissolution.

VIII.

That plaintiff's Exhibit B is a true copy of the corporation income tax return of the Signal Gasoline Company for the calendar year 1923; that plaintiff's Exhibit C is a true copy of the amended corporation income tax return of the Signal Gasoline Company for the calendar year 1923; that plaintiff's Exhibit D is a true copy of the tentative corporation income tax return of the Signal Gasoline Company for the year 1924; that plaintiff's Exhibit E is a true copy of the final corporation income tax return of the Signal Gasoline Company for the calendar year 1924, all of which returns were duly filed by or on behalf of the Signal Gasoline Company, on March 15, 1924, May 13, 1925, March 16, 1925 and May 13, 1925, respectively.

IX.

That on October 2, 1928, and again on December 28, 1929, the Commissioner of Internal Revenue duly addressed and mailed a letter to the Signal *B*-Gasoline Corporation setting forth certain transferee deficiencies; that said letters, and each of them were duly received by or on behalf of the Signal Gasoline Corporation; that plaintiff's [47] Exhibit F is a true copy of the letter dated October 2, 1928; that plaintiff's Exhibit G is a true copy of the letter dated December 28, 1929.

X.

That thereafter petitions in the name of the Signal Gasoline Corporation were filed by the Signal Gasoline Corporation with the Board of Tax Appeals for a redetermination of the deficiencies proposed in the said letters dated October 2, 1928, and December 28, 1929; that the appeal from the deficiencies proposed in the letter of October 2, 1928, was, on November 19, 1928, docketed with the Board of Tax Appeals under Number 41532; that the appeal from the deficiencies proposed in the letter of December 28, 1929, was on February 24, 1930 docketed with the Board of Tax Appeals under Number 47620; that the petition was signed by six persons and stated that they were the statutory trustees of Signal Gasoline Corporation, a dissolved corporation, acting through its statutory trustees; that on February 16, 1932, the Board of Tax Appeals duly affirmed the ruling of the Commissioner of Internal Revenue in asserting the

deficiencies therein appealed from; that said decision of the Board of Tax Appeals is contained in an opinion reported in 25 Board of Tax Appeals 532; that plaintiff's Exhibit H is a true and certified copy of the petition and decision in the said Board of Tax Appeals docket No. 41532; that plaintiff's Exhibit I is a true and certified copy of the petition and decision in Board of Tax Appeals docket No. 47620.

XI.

That on September 10, 1932, the Commissioner of Internal Revenue duly assessed the Signal Gasoline Corporation, as a transferee of the Signal Gasoline Company, for the above described tax liabilities of the Signal Gasoline Company in the amounts and for the taxable periods as follows:

[48]

For the taxable year 1923—\$468.33, plus interest of \$227.96.

For the taxable period ended, September 11, 1924—\$2,672.53, plus interest of \$1,200.70.

That plaintiff's Exhibit J is a true and certified photostatic copy of the assessment lists of the Commissioner of Internal Revenue setting forth the assessments herein described.

XII.

That plaintiff's Exhibit 3 is a true copy of the income tax return filed on May 13, 1925 by the Signal Gasoline Corporation for the calendar year 1924.

XIII.

That on December 3, 1928, the Signal Gasoline Corporation signed and filed Form 872, which is entitled "Consent Fixing Period of Limitation upon Assessment of Income and Profits Tax", thereby extending the statute of limitations for the assessment of deficiencies on account of the Signal Gasoline Corporation's tax liability for the calendar year 1924; that plaintiffs' Exhibit 4 is a true copy of the said form.

XIV.

That on December 28, 1929 the Commissioner of Internal Revenue duly addressed and mailed a letter to the Signal Gasoline Corporation; that this letter proposed an assessment of additional tax liabilities against the Signal Gasoline Corporation on account of a deficiency for the calendar year 1924; that the said letter also proposed an assessment of other additional tax liabilities for the calendar years 1925 and 1926; that plaintiff's Exhibit 5 is a true copy of the said letter.

XV.

That under date of November 21, 1928 the Signal Gasoline Corporation executed a power of attorney to certain attorneys authorizing the said attorneys to represent the Signal Gasoline Corporation before [49] the Treasury Department of the United States and the United States Board of Tax Appeals with reference to the tax liabilities of the

Signal Gasoline Corporation for the calendar years 1924 and 1925; that said power of attorney was signed by S. B. Mosher and O. W. March, President and Secretary respectively of the Signal Gasoline Corporation; that plaintiff's Exhibit 6 is a true copy of the said power of attorney.

XVI.

That under date of November 20, 1929 a power of attorney was executed whereby certain attorneys were authorized to represent the Signal Gasoline Corporation before the Treasury Department and the Board of Tax Appeals in connection with the tax liabilities of the said corporation for the calendar years 1926 and 1927. The said power of attorney was executed in the name of the Signal Gasoline Corporation, but stated that it was a dissolved corporation acting through its statutory trustees, and was signed on the margin thereof by each of the statutory trustees of the dissolved Signal Gasoline Corporation; that plaintiff's Exhibit 7 is a true copy of the said power of attorney.

XVII.

That on or about February 24, 1930 a petition was filed with the Board of Tax Appeals for a redetermination of the deficiencies proposed in plaintiff's Exhibit 5 above referred to; that said proceeding was therein given docket No. 47621; that said petition was filed under the name of the Signal Gasoline Corporation. However, in the body of the petition there was an allegation stating that

“the petitioner is a dissolved California corporation acting through its statutory trustees * * *”. The petition was verified by all of the statutory trustees; that plaintiff’s Exhibit 8 is a true copy of the said petition to the Board of Tax Appeals; that by an order entered on March 15, 1932 the Board of Tax Appeals determined that the deficiencies asserted therein by the Commissioner of Internal Revenue were correct; that the opinion of the Board of Tax Appeals regarding this matter is reported in 25 Board of Tax Appeals 861. [50]

XVIII.

That on October 1, 1932, pursuant to the said adjudication by the Board of Tax Appeals, referred to in the preceding paragraph, the Commissioner of Internal Revenue duly assessed the Signal Gasoline Corporation for its tax deficiency for the calendar year 1924 in the principal amount of \$14,137.05, plus interest of \$6,080.77; that plaintiff’s Exhibit 9 is a true copy of the assessment list of the Commissioner, upon which there appears the said assessment against the Signal Gasoline Corporation.

XIX.

That by reason of the dissolution of the Signal Gasoline Corporation and the disbursement of all of its assets to its statutory trustees, as above set forth, the Signal Gasoline Corporation was and is left without any money, assets or property of any kind with which to pay the said taxes and interest due to the United States.

XX.

That the assets which were acquired by the defendant Signal Oil and Gas Company, as sole stockholder of the Signal Gasoline Corporation, as heretofore shown, were far in excess of the taxes and interest prayed for in the Complaints herein.

XXI.

That due demand for the payment of the taxes and interest prayed for in the Complaints herein has been made upon the Signal Oil and Gas Company, but no portion thereof has been paid.

XXII.

That at all times herein mentioned and considered substantially the same persons were officers and directors or statutory trustees of the Signal Gasoline Corporation as were the officers and directors of the Signal Oil and Gas Company and officers and directors of the Signal Gasoline Company, Incorporated. [51]

XXIII.

That in the proceedings before the Board of Tax Appeals under docket numbers 41532, 47620 and 47621, no substitution of parties was ever made and no motion for such substitution was ever made by either of the parties.

XXIV.

That all of the Exhibits filed by plaintiff herein are true copies of the originals thereof.

XXV.

That in addition to the acts heretofore described, the statutory trustees of the Signal Gasoline Corporation after its dissolution, who were those persons who were the officers and directors of the defendant, persisted in transacting business affairs of the dissolved corporation in the name of the Signal Gasoline Corporation and in particular in the negotiations with the United States of America regarding the tax liabilities of the Signal Gasoline Corporation.

XXVI.

That no assessment was ever made against the Signal Oil and Gas Company for the 1923 and 1924 tax liabilities of the Signal Gasoline Company; that no assessment was ever made against the Signal Oil and Gas Company for the tax liabilities due from the Signal Gasoline Corporation for the year 1924; that no assessment was ever made against the Signal Gasoline Company for the said 1924 tax liability of the Signal Gasoline Company; that an assessment against the Signal Gasoline Company was made on July 3, 1931, in the amount of \$468.33 plus interest for its said tax liability for the calendar year 1923.

XXVII.

On May 13, 1929, a corporation income tax return was filed with the Collector of Internal Revenue at Los Angeles, California on behalf of the Signal Gasoline Corporation and was signed by

S. B. Mosher, as President, and O. W. Marsh, as Treasurer of the said corporation. In said return it was stated in Affiliation Schedule No. 3 thereof that [52] the Signal Gasoline Corporation had been dissolved in December of 1928; that plaintiff's Exhibit 20 is a true copy of the said return.

XXVIII.

In the Revenue Agent's report, dated August 26, 1930, it was stated that the Signal Gasoline Corporation had distributed all of its assets to its stockholders upon its dissolution in December 1928; that plaintiff's Exhibit 15 is a true copy of those portions of the said Revenue Agent's report, which contain those statements. In the letter, dated March 30, 1931 from the Commissioner of Internal Revenue and addressed to the Signal Gasoline Corporation, which letter was the 60 day letter proposing additional taxes for the year 1928, it was stated that the Signal Gasoline Corporation had been dissolved in December 1928; that plaintiff's Exhibit 14 is a true copy of said letter.

CONCLUSIONS OF LAW

I.

That the assessments by the Commissioner of Internal Revenue against the Signal Gasoline Corporation, described in Paragraphs XI and XVIII of the Findings of Fact herein, are correct, timely and valid.

II.

That the said proceedings before the Board of Tax Appeals, the said decisions of the Board of Tax Appeals and the said assessments by the Commissioner of Internal Revenue are valid.

III.

That the actions herein are not barred by the statute of limitations and, therefore, have been timely commenced.

IV.

That the defendant is estopped from setting up the bar of the statute of limitations to the causes of action set forth in Complaints No. 1460-Y and No. 1461-Y. [53]

V.

That the transfer of the assets of the Signal Gasoline Corporation to the defendant as its sole stockholder impressed those assets with a trust for the benefit of the creditors of the Signal Gasoline Corporation and for the benefit of the United States of America in the assertion of its claim for unpaid taxes due from the Signal Gasoline Corporation.

VI.

That plaintiff is entitled to judgment against the defendant in the sum of \$20,217.82, together with interest as provided by law from October 1, 1932 and in the sum of \$4,569.52, together with interest as provided by law from September 10, 1932.

Dated: This 26th day of December, 1940.

LEON R. YANKWICH,

United States District Judge.

Approved as to form as provided by Rule 8:

JOSEPH D. PEELER and

MELVIN D. WILSON.

By MELVIN D. WILSON,

Attorneys for Defendant.

[Endorsed]: Filed Dec. 26, 1940. [54]

In the District Court of the United States in and
for the Southern District of California, Cen-
tral Division.

No. Eq. 1460-Y

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SIGNAL OIL AND GAS COMPANY,

Defendant.

No. Eq. 1461-Y

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SIGNAL OIL AND GAS COMPANY,

Defendant.

JUDGMENT

The above entitled cases having come on for
trial on the 16th day of January, 1940, before the

Honorable Leon R. Yankwich, United States District Judge, sitting without a jury, plaintiff being represented by the United States Attorney, and Edward H. Mitchell, Assistant United States Attorney, by Armond Monroe Jewell, Assistant United States Attorney, and defendant being represented by Joseph D. Peeler, Esq.; and Melvin D. Wilson, Esq., by Melvin D. Wilson, Esq., and a stipulation of facts having been filed and the court having ordered the consolidation of the above entitled causes for the purpose of trial, and documentary evidence having been offered on behalf of the plaintiff; and the Court having made its Findings of Fact and Conclusions of Law;

Now, therefore, it is ordered, adjudged and decreed that plaintiff have judgment against the defendant in the sum of twenty thousand two hundred [55] and seventeen dollars eighty-two cents (\$20,217.82) together with interest at the rate of 12% per annum from October 1, 1932 to October 24, 1933, and interest at the rate of 6% per annum from October 24, 1933 to the date of payment; and in the sum of four-thousand five hundred and sixty-nine dollars fifty-two cents (\$4,569.52) together with interest at the rate of 12% per annum from September 10, 1932 to October 24, 1933, and interest at the rate of 6% per annum from October 24, 1933 to date of payment, to-

gether with costs in the sum of (\$27.14) (\$27.06) dollars.

Dated: This 26th day of December, 1940.

LEON R. YANKWICH,

United States District Judge.

Approved as to form as provided by Rule 8:

JOSEPH D. PEELER and

MELVIN D. WILSON.

By MELVIN D. WILSON,

Attorneys for Defendant.

Judgment entered Dec. 26, 1940.

Docketed Dec. 26, 1940.

C. O. Book 4, Page (170) (172).

R. S. ZIMMERMAN,

Clerk.

By LOUIS J. SOMERS,

Deputy.

[Endorsed]: Filed Dec. 26, 1940. [56]

[Title of District Court and Cause—No. Eq.
1460-Y]

NOTICE OF APPEAL

Notice is hereby given that Signal Oil and Gas Company, a corporation, defendant above named, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from that certain judgment entered in the above entitled action

on the 26th day of December, 1940, in which action United States of America is plaintiff.

The judgment in the above case and in United States of America vs. Signal Oil and Gas Company, No. Eq. 1461-Y, was entered as a consolidated judgment.

Dated: March 17, 1941.

MELVIN D. WILSON,

JOSEPH D. PEELER,

Attorneys for Defendant.

Copies mailed to U. S. Atty. 3-20-41.

R. S. ZIMMERMAN,

Clerk.

By E. L. S.

[Endorsed]: Filed Mar. 20, 1941. [57]

[Title of District Court and Cause—No. Eq.
1461-Y.]

NOTICE OF APPEAL

Notice is hereby given that Signal Oil and Gas Company, a corporation, defendant above named, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from that certain judgment entered in the above entitled action on the 26th day of December, 1940, in which United States of America is plaintiff.

The judgment in the above case and in United States of America vs. Signal Oil and Gas Com-

pany, No. Eq. 1460-Y, was entered as a consolidated judgment.

Dated: March 17, 1941.

MELVIN D. WILSON,
JOSEPH D. PEELER,
Attorneys for Defendant.

Copies mailed to U. S. Atty. 3-20-41.

R. S. ZIMMERMAN,
Clerk.

By E. L. S.

[Endorsed]: Filed Mar. 20, 1941. [58]

[Title of District Court and Cause—Nos. 1460-Y
and 1461-Y.]

STIPULATION FOR CONSOLIDATED
RECORD ON APPEAL

It is hereby stipulated by and between the respective parties hereto, through their respective counsel, that the above entitled causes of action, having been consolidated for the purpose of trial, may be consolidated for the purpose of appeal and that one record on appeal will be sufficient and satisfactory for the purpose of appealing both cases.

Dated: March 19, 1941.

WM. FLEET PALMER

United States Attorney

E. H. MITCHELL

Asst. United States Attorney

ARMOND MONROE JEWELL

Asst. United States Attorney

By ARMOND MONROE JEWELL

Attorneys for Plaintiff.

MELVIN D. WILSON

JOSEPH D. PEELER

Attorneys for Defendant. [59]

It is so ordered this 20th day of March, 1941, at
4:40 P. M.

PAUL J. McCORMICK

United States District Judge.

[Endorsed]: Filed Mar. 20, 1941. [60]

[Title of District Court and Cause—Nos. 1460-Y
and 1461-Y.]

STIPULATION FOR ORDER EXTENDING
TIME FOR FILING RECORD ON APPEAL
AND DOCKETING THE ACTION AND
ORDER.

It is hereby stipulated by and between the respective parties hereto, through their respective counsel, that the Court may extend the time for filing the record on appeal and docketing the action

in the above entitled causes, from April 26, 1941 to May 11, 1941.

Dated: April 24, 1941.

WM. FLEET PALMER

United States Attorney

E. H. MITCHELL

Asst. United States Attorney

ARMOND MONROE JEWELL

Asst. United States Attorney

By ARMOND MONROE JEWELL

Attorneys for Plaintiff.

MELVIN D. WILSON

JOSEPH D. PEELER [61]

ORDER

Upon filing the foregoing Stipulation of the parties,

It Is Ordered that the appellant may have from April 26, 1941 to May 11, 1941 within which to file the record on appeal and docket the action in the above entitled cases.

Apr. 24, '41, at 3:45 P. M.

PAUL J. McCORMICK

Judge.

[Endorsed]: Filed Apr. 24, 1941. [62]

[Title of District Court and Cause—Nos 1460-Y
and 1461-Y.]

STIPULATION DESIGNATING RECORD ON
APPEAL

Pursuant to Rule 75 (f) of The Federal Rules of Civil Procedure, it is hereby stipulated by and between the parties hereto, through their respective counsel, that the following shall constitute the Record on Appeal in the above entitled cases:

1. Order Transferring Case, Pursuant to Rule 19, dated February 8, 1939 (Case No. 1461 R. J.)
2. Complaint (Case No. 1460-Y)
3. Complaint (Case No. 1461-Y)
4. Answer (Case No. 1460-Y)
5. Answer (Case No. 1461-Y)
6. Stipulation (Case No. 1460-Y)
7. Stipulation (Case No. 1461-Y)
8. Minute Order of Court before Hon. Leon R. Yankwich, Tuesday, January 16, 1940 (Cases 1460-Y and 1461-Y)
9. Amended and Supplemental Answer (Case No. 1461-Y)
10. Minute Order (Case No. 1460-Y) [63]
11. Minute Order (Case No. 1461-Y)
12. Findings of Fact and Conclusions of Law (Case No. 1460-Y)
13. Findings of Fact and Conclusions of Law (Case No. 1461-Y)
14. Judgment (Cases Nos. 1460-Y and 1461-Y)

15. Notice of Appeal (Case No. 1460-Y)
16. Notice of Appeal (Case No. 1461-Y)
17. Stipulation for Consolidated Record on Appeal and Order attached (Cases Nos. 1460-Y and 1461-Y)
18. Stipulation for Order Extending Time for Filing Record on Appeal and Docketing the Action, and Order (Cases Nos. 1460-Y and 1461-Y)
19. This Designation of Record on Appeal
20. Reporter's Transcript.
21. Plaintiff's Exhibits "A" to "K" inclusive (Case No. 1460-Y)
22. Plaintiff's Exhibits 1 to 21 inclusive (Case No. 1461-Y)
23. Order Permitting Original Exhibits to be Sent to Circuit Court in lieu of Copies, on Appeal (Cases Nos. 1460-Y and 1461-Y)

Dated this 30th day of April, 1941.

WM. FLEET PALMER

United States Attorney

E. H. MITCHELL

Asst. United States Attorney

ARMOND MONROE JEWELL

Asst. United States Attorney

By ARMOND MONROE JEWELL

(Attorneys for Plaintiff)

MELVIN D. WILSON

JOSEPH D. PEELER

Attorneys for Defendant

[Endorsed]: Filed May 1, 1941. [64]

[Title of District Court and Cause—Nos. 1460-Y
and 1461-Y.]

STIPULATION AND ORDER AS TO
ORIGINAL PAPERS OR EXHIBITS

It is hereby stipulated by and between the respective parties, through their respective counsel that the Court may order the original stipulation, the exhibits, and reporter's transcript to the United States Circuit Court of Appeals for the Ninth Circuit in lieu of the copies thereof, such papers to be returned to the District Court upon the termination of the appellate proceedings.

Dated: April 30, 1941.

WM. FLEET PALMER

United States Attorney

E. H. MITCHELL

Asst. United States Attorney

ARMOND MONROE JEWELL

Asst. United States Attorney

By ARMOND MONROE JEWELL

Attorneys for Plaintiff

MELVIN D. WILSON

JOSEPH D. PEELER

Attorneys for Defendant. [65]

It Is So Ordered.

Dated: April 30, 1941.

LEON R. YANKWICH

Judge of the District Court

[Endorsed]: Filed May 1, 1941. [66]

[Title of District Court and Causes.]

CERTIFICATE OF CLERK

I, R. S. Zimmerman, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages, numbered from 1 to 66 inclusive, contain full, true and correct copies of the Bill of Complaint in each case; Answer in each case; Order Transferring case; Stipulation of Facts in each case; Order Consolidating Cases and Allowing Filing Amended and Supplemental Answer in Case No. 1461; Amended and Supplemental Answer in Case No. 1461; Decision of Court in each case; Findings of Fact and Conclusions of Law; Judgments; Notice of Appeal in each case; Stipulation and Order for Consolidated Record on Appeal; Stipulation and Order Extending Time to Docket Appeal; Stipulation Designating Record on Appeal and Stipulation and Order for Transmittal of Original Exhibits, Reporter's Transcript, etc., to the Circuit Court of Appeals, which together with the Original Exhibits and Reporter's Transcript of Proceedings transmitted herewith constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I do further certify that the clerk's fees for comparing, correcting and certifying the foregoing record amount to \$10.10 which amount has been paid to me by Appellant.

Witness my hand and the seal of the District

Court of the United States for the Southern District of California, this 3rd day of May, A. D. 1941.

[Seal]

R. S. ZIMMERMAN,

Clerk,

By: EDMUND L. SMITH

Deputy. [67]

[STATEMENT OF FACTS]

Stipulated to in lieu of Reporter's Transcript]

(a) That these are suits in equity by the United States of America of a civil nature arising under the laws of the United States providing for internal revenue and the collection thereof, brought on September 9, 1938, at the direction of the Attorney General and begun and prosecuted with the sanction and at the request of the Commissioner of Internal Revenue to obtain relief for the appellee; and that the appellee has no clear, adequate, or complete remedy at law.

(b) That pursuant to and in accordance with an agreement between the Signal Gasoline Company, a California corporation, and the Signal Gasoline Corporation, a California corporation, dated May 1, 1924, all the assets of the Signal Gasoline Company were turned over to the Signal Gasoline Corporation for 400,000 shares of stock of the Signal Gasoline Corporation plus the assumption of "outstanding liabilities" not exceeding \$51,076.80 (including all income taxes that may be due the United States Government to the date of the assign-

ment), and on September 11, 1924, the Signal Gasoline Company was dissolved; the 400,000 shares, received by the Signal Gasoline Company in exchange for its net assets, were distributed to its stockholders.

(c) That at all times herein mentioned the Signal Gasoline Company, Inc., a corporation now dissolved, was, prior to its dissolution, a holding company for the stock of the Signal Gasoline Corporation.

(d) That on July 31, 1928, the Signal Gasoline Company, Inc., owned 419,500 shares of the stock of the Signal Gasoline Corporation, which was 93.22% of the outstanding 450,005 shares of the Signal Gasoline Corporation; the balance of 30,505 shares of the stock outstanding of the Signal Gasoline Corporation (4.23%) was owned by individual stockholders of the Signal Gasoline Company, Inc.

(e) That on August 1, 1928, the appellant, Signal Oil and Gas Company, acquired all the assets of the Signal Gasoline Company, Inc., which, as noted above, included 93.22% of the stock of the Signal Gasoline Corporation, in exchange for stock of the Signal Oil and Gas Company.

(f) That on or about November 30, 1928, the appellant, Signal Oil and Gas Company, acquired the remaining 4.23% of the outstanding stock of the Signal Gasoline Corporation from the individual stockholders of the Signal Gasoline Company, Inc., by exchange for stock of the Signal Oil and Gas Company.

(g) That the Signal Gasoline Corporation was liquidated as of December 1, 1928, and all of its assets and liabilities were assigned in accordance with a certain instrument of conveyance and the Decree of Dissolution of the Superior Court. That Plaintiff's Exhibits 1 and 2 respectively, are true copies of the said instrument of conveyance and the Decree of Dissolution, and are attached hereto and made a part hereof.

(h) That the original 1923 income tax return of Signal Gasoline Company was filed by or on behalf of the Company on March 15, 1924, and an amended return for that year was filed on May 13, 1925. A tentative income tax return for Signal Gasoline Company for 1924 was filed March 16, 1925, and the final return for the year 1924 was filed on May 13, 1925.

(i) That on October 2, 1928, and again on December 28, 1929, the Commissioner of Internal Revenue duly addressed and mailed a letter to the Signal Gasoline Corporation setting forth certain transferee deficiencies; the letter of October 2, 1928, claiming a deficiency of \$468.33 for 1923 to be due from Signal Gasoline Corporation as transferee of the assets of Signal Gasoline Company; the letter of December 28, 1929, claiming a deficiency of \$2,672.53 for the period ended September 11, 1924, to be due from Signal Gasoline Corporation as transferee of the assets of Signal Gasoline Company.

(j) That thereafter petitions in the name of the Signal Gasoline Corporation were filed with the Board of Tax Appeals for a redetermination of the deficiencies proposed in the said letters dated October 2, 1928, and December 28, 1929; that the appeal from the deficiency proposed in the letter of October 2, 1928, was on November 19, 1928, docketed with the Board of Tax Appeals under No. 41532; that the appeal from the deficiency proposed in the letter of December 28, 1929, was on February 24, 1930, docketed with the Board of Tax Appeals under No. 47620. The petition numbered 47620 stated in its first paragraph that "The Petitioner is a dissolved Corporation acting through its statutory trustees * * *"; the verification on the petition numbered 47620 was signed by six persons, and this verification stated that these six persons were "* * * the statutory trustees of Signal Gasoline Corporation, a dissolved corporation * * *"; that the petition numbered 41532 and the petition numbered 47620 were each signed by Robert N. Miller and Melvin D. Wilson, as attorneys for the petitioners; that on February 16, 1932, the Board of Tax Appeals purported to affirm the rulings of the Commissioner of Internal Revenue in asserting the deficiencies appealed from in petitions numbered 41532 and 47620; that said decision of the Board of Tax appeals is contained in an opinion reported in 25 Board of Tax Appeals 532.

(k) That on September 10, 1932, the Commis-

sioner of Internal Revenue purported to assess the Signal Gasoline Corporation as a transferee of the Signal Gasoline Company, for the above described tax liabilities of the Signal Gasoline Company in the amounts and for the taxable periods as follows:

For the taxable year 1923, \$468.33 plus interest of \$227.96. For the taxable period ended September 11, 1924, \$2,672.53 plus interest of \$1,200.70.

That attached hereto and made a part hereof is a true copy of Plaintiff's Exhibit J which is a true copy of the Assessment List of the Commissioner of Internal Revenue.

(l) Signal Gasoline Corporation filed its income tax return for the calendar year 1924 on or about May 13, 1925.

(m) On December 3, 1928, the Signal Gasoline Corporation signed and filed Form 872, which is entitled "Consent Fixing Period of Limitation upon Assessment of Income and Profits Tax"; that Plaintiff's Exhibit 4 is a true copy of the said form, and is attached hereto and made a part hereof.

(n) On December 28, 1929 the Commissioner of Internal Revenue addressed and mailed a letter to the Signal Gasoline Corporation; this letter proposed an assessment of additional tax liabilities against the Signal Gasoline Corporation on account of an alleged deficiency in its income tax for the period May 1, to December 31, 1924, in the amount of \$14,137.05; that the said letter also proposed an

assessment of other additional tax liabilities for the calendar years 1925 and 1926.

(o) Under date of November 21, 1928, the Signal Gasoline Corporation executed a power of attorney to certain attorneys authorizing the said attorneys to represent the Signal Gasoline Corporation before the Treasury Department of the United States and the United States Board of Tax Appeals with reference to the tax liabilities of the Signal Gasoline Corporation for the calendar years 1924 and 1925; that attached hereto and made a part hereof is a true copy of Plaintiff's Exhibit 6 which is a true copy of said Power of Attorney.

(p) That under date of November 20, 1929, a power of attorney was executed whereby certain attorneys were authorized to represent Signal Gasoline Corporation, a dissolved corporation, before the Treasury Department and the Board of Tax Appeals in connection with the tax liabilities of the said corporation for the calendar years 1926 and 1927; that attached hereto is a true copy of Plaintiff's Exhibit 7 which is a true copy of said Power of Attorney.

(q) That on or about February 24, 1930, a petition was filed with the Board of Tax Appeals for a redetermination of the 1924, 1925 and 1926 deficiencies proposed in the Commissioner's letter dated December 28, 1929, above referred to; that said proceeding was therein given docket No. 47621; that said petition was filed under the name of the Sig-

nal Gasoline Corporation; the petition numbered 47621 stated in its first paragraph that: "The petitioner is a dissolved California corporation acting through its statutory trustees * * *"; the verification on the petition numbered 47621 was signed by six persons, and this verification stated that these six persons were "* * * the statutory trustees of Signal Gasoline Corporation, a dissolved corporation * * *"; that the petition numbered 47621 was signed by Robert N. Miller and Melvin D. Wilson as attorneys for the petitioners; that on March 15, 1932, the Board of Tax Appeals purported to affirm the rulings of the Commissioner of Internal Revenue in asserting the deficiencies appealed from in petition numbered 47621; that said decision of the Board of Tax Appeals is contained in an opinion reported in 25 Board of Tax Appeals 861.

(r) On October 1, 1932, the Commissioner of Internal Revenue purported to assess the Signal Gasoline Corporation for its tax deficiency for the calendar year 1924 in the principal amount of \$14,137.05, plus interest of \$6,080.77; that attached hereto and made a part hereof is a true copy of Plaintiff's Exhibit 9 which is a true copy of the Assessment list of the Commissioner of Internal Revenue.

(s) That by reason of the dissolution of the Signal Gasoline Corporation and the disbursement of all of its assets to its statutory trustees, as above set forth, the Signal Gasoline Corporation was and

is left without any money, assets or property of any kind with which to pay the said taxes and interest claimed herein by the United States.

(t) That the assets which were acquired by the appellant, Signal Oil and Gas Company, as sole stockholder of the Signal Gasoline Corporation, as heretofore shown, were far in excess of the taxes and interest prayed for in the complaints herein.

(u) That due demand for the payment of the taxes and interest prayed for in the complaints herein has been made upon the Signal Oil and Gas Company but no portion thereof has been paid.

(v) That at all times herein mentioned and considered substantially the same persons were officers and directors or statutory trustees of the Signal Gasoline Corporation as were the officers and directors of the Signal Oil and Gas Company and officers and directors of the Signal Gasoline Company.

(w) That in the proceedings before the Board of Tax Appeals under docket numbers 41532, 47620 and 47621, no substitution of parties was ever made and no motion for such substitution was ever made by either of the parties.

(x) A protest against a proposed deficiency for 1927 income taxes of Signal Gasoline Corporation was signed about November 20, 1929. This protest was signed "Signal Gasoline Corporation, By S. B. Mosher". At the left of the said signature, five other trustees of the dissolved corporation signed

their names. The protest was verified by Melvin D. Wilson, one of the attorneys in fact and in law, who stated that he had verified it for the reason that when "the statutory trustees" signed the protest, they neglected to acknowledge it before a notary public.

An offer to compromise the taxes here involved, acknowledged October 21, 1932, was filed shortly thereafter. It was signed "Signal Gasoline Corporation, By S. B. Mosher, H. M. Mosher, O. W. March, R. H. Green, C. LaV. Larzelere". The acknowledgment stated that the above named persons were the statutory trustees of Signal Gasoline Corporation, a dissolved corporation. In the body of the offer, it was stated that Signal Gasoline Corporation was dissolved December 12, 1928.

A similar offer, acknowledged January 23, 1933, and filed shortly thereafter, stated that Signal Gasoline Corporation was dissolved December 12, 1928. It was signed "Signal Gasoline Corporation, By Melvin D. Wilson, Attorney in Fact". In the acknowledgment, it was stated that Signal Gasoline Corporation was a dissolved corporation.

(y) Except for the matters covered in this record, no other correspondence with the Commissioner or Collector of Internal Revenue was filed by or on behalf of the Signal Gasoline Company or the Signal Gasoline Corporation after their dissolution, excepting:

1. That on January 20, 1932, a letter to the Commissioner was written and signed "Signal Gas-

oline Corporation, By J. H. Rounsavell, Comptroller", advising the Commissioner to change his records so that all correspondence relative to the income tax matters of Signal Gasoline Corporation for 1924 to 1928 inclusive would be sent to 1200 Signal Oil Building, 811 West Seventh Street, Los Angeles, California.

2. On January 20, 1932, a letter to the Commissioner signed "Signal Gasoline Company, By J. H. Rounsavell, Comptroller", was mailed, advising the Commissioner to change his records so that all correspondence pertaining to the income liability of Signal Gasoline Company for 1922 to 1924 inclusive would be sent to 1200 Signal Oil Building, 811 West Seventh Street, Los Angeles, California.

3. On January 20, 1932, a letter to the Commissioner, signed by "Signal Gasoline Company, Inc. by J. H. Rounsavell, Comptroller" was mailed, advising the commissioner to change his records so that all correspondence pertaining to the income tax liability of Signal Gasoline Company for 1925, 1926, 1927 and 1928 inclusive would be sent to 1200 Signal Oil Building, 811 West Seventh Street, Los Angeles, California.

4. On July 27, 1931, a letter signed "Signal Gasoline Corporation, by J. H. Rounsavell, Comptroller" was mailed to the Collector at Los Angeles, California, stating that there was pending before the United States Board of Tax Appeals the question of whether Signal Gasoline Corporation was

liable for the 1923 income tax liability of Signal Gasoline Company.

(z) That no assessment was ever made against the Signal Oil and Gas Company for the 1923 and 1924 tax liabilities of the Signal Gasoline Company; that no assessment was ever made against the Signal Oil and Gas Company for the tax liabilities due from the Signal Gasoline Corporation for the year 1924; that no assessment was ever made against the Signal Gasoline Company for the said 1924 tax liability of the Signal Gasoline Company; that an assessment against the Signal Gasoline Company was made on July 3, 1931, in the amount of \$468.33 plus interest for its said tax liability for the calendar year 1923.

(aa) On May 13, 1929, a corporation income tax return for 1928 was filed with the Collector of Internal Revenue at Los Angeles, California on behalf of the Signal Gasoline Corporation and was signed by S. B. Mosher, as President, and O. W. March, as Treasurer of the said corporation. In said return it was stated in Affiliation Schedule No. 3 thereof that the Signal Gasoline Corporation had been dissolved in December of 1928.

(bb) In a Revenue Agent's report, dated August 26, 1930, it was stated that the Signal Gasoline Corporation had distributed all of its assets to its sole stockholder, the Signal Oil and Gas Company, upon its dissolution in December, 1928. In a letter dated March 30, 1931 from the Commissioner of Internal Revenue and addressed to the

Signal Gasoline Corporation, which letter was the 60-day letter proposing additional taxes for the year 1928, it was stated that the Signal Gasoline Corporation had been dissolved in December, 1928.

PLAINTIFF'S EXHIBIT 1

SIGNAL GASOLINE CORPORATION
NOTICE RE: CONVEYANCE OF ASSETS

Know All Men By These Presents:

That whereas, on the 12th day of December, 1928, The Superior Court of the State of California in and for the County of Los Angeles made and filed its decree dissolving the Signal Gasoline Corporation, which decree was, on the 13th day of December, 1928 entered in Book 701 at Page 165 of Judgments, Records of said County of Los Angeles, and whereas, in the aforesaid Decree it was ordered and decreed that S. B. Mosher, H. M. Mosher, O. W. March, Ross McCollum, C. LaV. Larzelere and R. H. Green were entitled to be, and were by the Court therein appointed Trustees for the stockholders of said corporation, with power and direction to settle all the affairs of said corporation and to distribute and convey all of the property of said corporation to the stockholders thereof a copy of which decree is hereunder annexed and made a part hereof, and whereas the Signal Oil and Gas Company, a Delaware corporation, is the owner and holder of all the issued and outstanding stock of

said Signal Gasoline Corporation and as such is entitled to distribution of all of the property of said Signal Gasoline Corporation; Now therefore, in consideration of the premises S. B. Mosher, H. M. Mosher, O. W. March, Ross McCollum, C. LaV. Larzelere and E. H. Green, as Trustees for the stockholders of said Signal Gasoline Corporation, a dissolved corporation, and also in their individual capacities, do hereby assign, transfer, grant, convey, deliver and distribute to said Signal Oil and Gas Company, a Delaware corporation, all of the assets, business and property as a whole and of every kind, character and description, both tangible and intangible, legal and equitable and wherever situated, including all real property and all interests therein situate in the State of California and elsewhere, possessed by said dissolved corporation at the time of its dissolution, including all cash on hand and all bills and accounts receivable of said dissolved corporation from whomever due and wheresoever evidences thereof, if any, may be held, and all contract rights, rights of action, vouchers and things in action, and without any limitation or exception whatsoever, and subject to all outstanding obligations and liabilities thereon, and subject to the payment of income taxes that may be due to the United States Government covering operations of said dissolved corporation during the current year and all sums that may be found due covering income taxes for previous years. We further

give to said Signal Oil and Gas Company, its successors and assigns, both power and authority for its own use and benefit, but at its own cost, to take all legal measures which may be proper and necessary for the complete recovery of any of the property hereby assigned, and in its own name to prosecute and withdraw any suit at law or equity therefor. The transfer of the foregoing property shall take effect as of the date of this instrument, to-wit: the 14th day of December, 1928.

In Witness Whereof, we have executed this instrument in the manner hereinafter appearing, in the capacity and pursuant to the authority above related and also in our individual capacities, this 14th day of December, 1928.

R. H. GREEN

C. LaV. LARZELERE

O. W. MARCH

ROSS McCOLLUM

S. B. MOSHER

H. M. MOSHER

as Trustees for the Signal Gasoline Corporation,
a Dissolved Corporation.

R. H. GREEN

C. LaV. LARZELERE

O. W. MARCH

ROSS McCOLLUM

S. B. MOSHER

H. M. MOSHER

as individuals.

(Subscribed and sworn to before May E. Martin,
Notary Public, December 14, 1928.)

[Endorsed]: U. S. Exhibit No. 1. Filed 1/16/40.
R. S. Zimmerman, Clerk. By Louis J. Somers, Dep-
uty Clerk.

PLAINTIFF'S EXHIBIT 2

In the Superior Court of the State of California,
in and for the County of Los Angeles

No. 263815

In the Matter of the Application of
SIGNAL GASOLINE CORPORATION, a cor-
poration, for Dissolution.

DECREE OF DISSOLUTION

The voluntary application for dissolution of the Signal Gasoline Corporation, a domestic corporation, coming on regularly this day for hearing and determination, the Court finds: 1. That on October 19, 1928 in accordance with the order of the Judge of this Court, the said Signal Gasoline Corporation filed with the Clerk of this Court its application for its dissolution as a corporation. 2. That in accordance with the order of a Judge of this Court the Clerk of said Court has given thirty days' notice of said application for dissolution, by publication in the Los Angeles Daily Journal, a newspaper of general circulation printed and pub-

lished in the said County of Los Angeles, which thirty days' notice which said publication thereof was completed and expired on November 27, 1938.

3. That no objection to said application for dissolution has at any time been filed. 4. All allegations and statements in said application for dissolution made are true and to this court, by this evidence introduced herein, have been shown so to be. 5. And it further appears to the Court from evidence introduced herein that the Board of Directors of said corporation under its Articles of Incorporation consisted of six (6) members and does now consist of six (6) members, namely:

S. B. MOSHER

O. W. MARCH

ROSS McCOLLUM

H. M. MOSHER

C. LaV. LARZELERE

R. H. GREEN

Wherefore, it is Ordered, Adjudged and Decreed, that said Corporation, the Signal Gasoline Corporation be, and the same is, and is hereby declared to be dissolved. It is further Ordered and Decreed that said S. B. Mosher, H. M. Mosher, O. W. March, Ross McCollum, C. LaV. Larzelere and R. H. Green are entitled to be, and are by the Court herein appointed, trustees for the stockholders of said corporation, with power and direction to settle all the affairs of said corporation, and to distribute and convey all the property of said corporation to each of said stockholders, in proportion to the number of

shares owned and held by said stockholders when said distribution and conveyance shall be made.

Done in open Court this 12th day of December 1928.

(Signed) MARSHALL McCOMB,

Judge.

#1816 Copy of original recorded at request of Signal Oil and Gas Company, 503 Roosevelt Building, Los Angeles, Calif., March 6, 1929 at 58 minutes past 2 p. m.

Copyist #61. Compared.

C. L. LOGAN,

Recorder,

By W. WHITNEY,

Deputy.

[Endorsed]: U. S. Exhibit No. 2. Filed 1/16/40.
R. S. Zimmerman, Clerk. By Louis J. Somers,
Deputy Clerk.

PLAINTIFF'S EXHIBIT "J"

ASSESSMENT CERTIFICATE

COMMISSIONER'S ASSESSMENT LIST

6th District of California

Month September 2 Year 1932

Additional Assessments made by Commissioner:

Personal\$ 70,966.13

Corporation 4,933.98

Total Assessments 75,900.11

I hereby certify that I have made inquiries, determinations, and assessments of taxes, penalties,

etc., of the above classification specified in these lists, and find that the amounts of taxes, penalties, etc., stated as corrected and as specified in the supplementary pages of this list made by me are due from the individuals, firms, and corporations opposite whose names such amounts are placed, and that the amount chargeable to the collector is as above.

Dated at Washington, D. C.

Office of Commissioner of Internal Revenue, September 10, 1932

(Signed) DAVID BURNET

Commissioner of Internal Revenue

ASSESSMENT LIST

Page No. 0

District 6th California, Income Tax, List September 2 1932

Old Balance	Date	Debit	Credit	New Balance	Remarks
1. Signal Gasoline Corp	Transferee	468.33		1923 2105	
505 Roosevelt Building	Int to 9-10-32	227.96		274B & 280	1
Los Angeles Calif	Transferor Signal Gasoline Co			OL 10-2-28	
	6th Calif Dist				
Sept 01 C#2	No Assessment				
2. Signal Gasoline Corp	Transferee	2672.53		1924 2105	
505 Roosevelt Building	Int to 9-10-32	1200.70		274B & 280	2
Los Angeles Calif	Transferor Signal Gasoline Co.			OL 12-28-29	
	6th Calif Dist				

Sept 02 C#2

No Assessment

[Endorsed]: U. S. Exhibit No. J. Filed 1/16/40.

R. S. Zimmerman, Clerk. By Louis J. Somers,
Deputy Clerk.

PLAINTIFF'S EXHIBIT 4

CONSENT FIXING PERIOD OF LIMITATION
UPON ASSESSMENT OF INCOME AND
PROFITS TAX

For Taxable Years Ended Prior to January 1, 1926.

November 21, 1928

In pursuance of the provisions of existing Internal Revenue Laws Signal Gasoline Corporation, a taxpayer of Los Angeles, California, and the Commissioner of Internal Revenue hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return made by or on behalf of the above-named taxpayer for the year (or years) 1924 and 1925, under existing acts, or under prior revenue acts, may be assessed at any time on or before December 31, 1929, except that, if a notice of a deficiency in tax is sent to said taxpayer by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the Commissioner is prohibited from making an assessment and for sixty days thereafter.

[Seal]

SIGNAL GASOLINE
CORPORATION

S. B. MOSHER, Pres.

Taxpayer

By.....

D. H. BLAIR Commissioner

If this consent is executed on behalf of a corporation, it must be signed by such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which, the seal, if any, of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolution passed by the Board of Directors, giving the officer authority to sign the consent.

(U. S. Board of Tax Appeals Div. 8 Docket 47621—Admitted in Evidence June 3 1931 Petitioner's Exhibit "A")

(Received Dec. 3 1928 Office of Head Audit Review Division)

[Endorsed]: U. S. Exhibit No. 4. Filed 1/16/40.
R. S. Zimmerman, Clerk. By Louis J. Somers,
Deputy Clerk.

PLAINTIFF'S EXHIBIT 6

Power of Attorney

Los Angeles, California,

November 21, 1928.

Commissioner of Internal Revenue,

Washington, D. C.

Sir:—

The undersigned corporation, Signal Gasoline Corporation, a corporation duly organized and existing under the laws of the State of California, with its principal place of business at Los Ange-

les, California, does hereby make, constitute and appoint Dana Latham and Melvin D. Wilson, of Miller, Chevalier & Latham, 819 Title Insurance Bldg., Los Angeles, California; Robert N. Miller and Ward Loveless, of Miller & Chevalier, 922 Southern Bldg., Washington, D. C.; Walker S. Clute, Roosevelt Bldg., Los Angeles, California, and Roger F. White, 804 Hellman Bank Bldg., Los Angeles, California, and each of them, its true and lawful attorneys, for it and in its name to represent it before the Treasury Department of the United States, any bureau or official thereof, and the United States Board of Tax Appeals, in all matters pertaining to the determination, assessment, collection or payment of any taxes under the laws of the United States and to all claims for abatement, refund or credit based on the assessment or payment of any such taxes; and, without limiting the foregoing powers, to examine and to request and receive copies of all returns, claims and other documents; to receive and receipt, in its behalf, for all checks and warrants made by the United States on account of any refunds; and generally to do, execute and perform all acts and things necessary or convenient in the premises (including authority to verify petitions to the said Board of Tax Appeals), with full power of substitution and revocation, hereby ratifying and confirming all that its attorneys and substitutes from time to time shall do or cause to be done by virtue thereof, and hereby expressly revoking all previous Powers of Attorney given by said corporation.

The foregoing powers shall apply to each of the transactions heretofore directed or authorized, with respect to taxes for the years 1924 and 1925.

Respectfully,

(Seal) SIGNAL GASOLINE
CORPORATION,

By S. B. MOSHER,

By O. W. MARCH.

State of California,

County of Los Angeles—ss.

On this 23 day of November, A. D. 1928, personally before me appeared the above named S. B. Mosher and O. W. March, to me known to be the parties who executed the foregoing Power of Attorney, who, first being duly sworn, stated: that they are the President and Secretary respectively, of the above-named corporation; that they signed, sealed and delivered the above instrument, pursuant to authority duly conferred upon them in that behalf, as the free and voluntary act of the said corporation, for the uses and purposes therein set forth.

In Witness whereof, I have hereunto set my hand and affixed my official seal this 23 day of November, A. D. 1928.

(Seal) MARY E. MARTIN,

Notary Public, in and for the County of Los Angeles, State of California.

[Endorsed]: U. S. Exhibit No. 6. Filed 1-16-40.
R. S. Zimmerman, Clerk. By Louis J. Somers, Deputy Clerk.

PLAINTIFF'S EXHIBIT 7

Power of Attorney

Los Angeles, California.

November 20, 1929.

Commissioner of Internal Revenue,

Washington, D. C.

Sir:—

The undersigned corporation, Signal Gasoline Corporation, a dissolved California corporation, through its statutory trustees whose principal place of business is at 505 Roosevelt Building, Los Angeles, California, does hereby make, constitute and appoint the law firm of Miller, Chevalier, Peeler & Wilson, 819 Title Insurance Bldg., Los Angeles, California, particularly Joseph D. Peeler and Melvin D. Wilson of that firm; and the law firm of Miller & Chevalier, 922 Southern Building, Washington, D. C., particularly Robert N. Miller, Ward Loveless, and J. Robert Sherrod of that firm; Walker S. Clute, Roosevelt Bldg., Los Angeles, California; and Roger F. White, Hellman Bank Bldg., Los Angeles, California, and each of them its true and lawful attorneys for it and in its name to represent it before the Treasury Department of the United States, any bureau or official thereof, and the United States Board of Tax Appeals, in all matters pertaining to the determination, assessment, collection or payment of any taxes under the laws of the United States and to all claims for abatement, refund or credit based on the assessment or

payment of any such taxes; and, without limiting the foregoing powers, to examine and to request and receive copies of all returns, claims and other documents; and generally to do, execute and perform all acts and things necessary or convenient in the premises (including authority to verify petitions to the said Board of Tax Appeals), with full power of substitution and revocation, hereby ratifying and confirming all that its attorneys and substitutes from time to time shall do or cause to be done by virtue thereof, and hereby expressly revoking all previous Powers of Attorney given by said corporation.

The foregoing powers shall apply to each of the transactions heretofore directed or authorized, with respect to taxes for the years 1926 and 1927.

Respectfully,

SIGNAL GASOLINE
CORPORATION,

By S. B. MOSHER.

R. H. GREEN

O. W. MARCH

ROSS. McCOLLUM

H. M. MOSHER

C. L. LARZALERE

State of California,

County of Los Angeles—ss.

On this 23 day of November, A. D. 1929, personally before me appeared the above named to me known to be the parties who executed the forego-

ing Power of Attorney, who, first being duly sworn, stated: that they are the statutory trustees of the above-named dissolved corporation; that they signed, sealed and delivered the above instrument, pursuant to authority duly conferred upon them in that behalf, as the free and voluntary act of the said dissolved corporation, for the uses and purposes therein set forth.

In witness whereof, I have hereunto set my hand and affixed my official seal this 23 day of November, A. D. 1929.

(Seal) MARY E. MARTIN,
Notary Public, in and for the County of Los Angeles, State of California.

[Endorsed]: U. S. Exhibit No. 7. Filed 1-16-40.
R. S. Zimmerman, Clerk. By Louis J. Somers, Deputy Clerk.

PLAINTIFF'S EXHIBIT 9

Assessment Certificate

Commissioner's Assessment List

6th District of California. Month October 1 Year 1932.

Additional Assessments made by Commissioner:

Personal—\$39706.99.

Corporation—\$104301.15.

Total Assessments—\$144008.14.

I hereby certify that I have made inquiries, determinations, and assessments of taxes, penalties, etc., of the above classification specified in these

lists, and find that the amounts of taxes, penalties, etc., stated as corrected and as specified in the supplementary pages of this list made by me are due from the individuals, firms, and corporations opposite whose names such amounts are placed, and that the amount chargeable to the collector is as above.

Dated at Washington, D. C., Office of Commissioner of Internal Revenue, October 1, 1932.

(Signed) DAVID BURNET,
Commissioner of Internal Revenue.

ASSESSMENT LIST

Page No. 0

District 6th California, Income Tax List October #1 1932

	Old Balance	Date	Debit	Credit	New Balance	Remarks
0	Signal Gasoline Corp					
	505 Roosevelt Bldg	Int to 10/1/32	14137.05		20217.82	1924 5/1-12/31
	Los Angeles Cal		6080.77			403117 274B
						WVR RAR 0
						OL 12/28/29
	Oct 00 C #1					
	Signal Gasoline Corp.					
1	505 Roosevelt Bldg	Int to 10/1/32	19340.18		26933.72	1925 402913
	Los Angeles Cal		7593.54			274B RAR WVR
						OL 12/28/29 1
	Oct 01 C #1					
	Signal Gasoline Corp					
2	505 Roosevelt Bldg	Int to 10/1/32	40804.19		54376.89	1926 401212
	Los Angeles Cal		13572.70			274B RAR 2
						OL 12/28/29

Oct 02 C #1

[Endorsed]: U. S. Exhibit No. 9. Filed 1-16-40.

R. S. Zimmerman, Clerk. By Louis J. Somers, Deputy Clerk.

[Endorsed]: No. 9813. United States Circuit Court of Appeals for the Ninth Circuit. Signal Oil and Gas Company, a Corporation, Appellant, vs. United States of America, Appellee. Transcript of Record Upon Appeals From the District Court of the United States for the Southern District of California, Central Division.

Filed May 6, 1941.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

United States Circuit Court of Appeals for the
Ninth Circuit

No. 9813

SIGNAL OIL AND GAS COMPANY, a Cor-
poration, Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

SIGNAL OIL AND GAS COMPANY, a Cor-
poration, Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

STATEMENT OF POINTS UPON WHICH AP-
PELLANT INTENDS TO RELY ON
THE APPEAL.

1. There was no evidence introduced at the trial showing that the taxes sued on were due from anyone. The alleged assessments relied on by the Appellee for that purpose were void and prove nothing, having been purportedly made long after the corporations against which they were supposed to have been made had been dissolved and utterly destroyed by their dissolution. Said alleged assessments were based upon alleged proceedings in the Board of Tax Appeals wherein the Appellee was guilty of laches in that it did not move for a dis-

missal or substitution of the parties petitioner although long having knowledge that the petitioners had been dissolved and destroyed by their dissolutions.

2. The suits by Appellee were barred by the statute of limitations as they were not brought within four years of the filing of the returns of the corporations whose taxes were involved and no assessment was made against the Appellant, but the Appellee was relying upon a six-year period within which to sue Appellant after alleged assessments against a prior transferee, but the alleged assessments against the prior transferee were invalid for the reason stated in Point 1, and even if the assessments against the prior transferee had been valid, they would not give Appellee six years within which to sue subsequent transferees.

3. Appellant is not estopped from asserting the bar of the statute of limitations, Appellee having at all times been in possession of all the material facts and having initially made an error of law which error misled the Appellant into further errors of law, if appellant made any errors of law, but estoppel does not arise from errors or mutual errors of law.

4. The judgments against Appellants should be reversed.

Dated: May 1, 1941.

MELVIN D. WILSON,
JOSEPH D. PEELER,

By M. D. W.

819 Title Insurance Building, Los Angeles, California, Counsel for Appellant.

Received copy of the within this 1 day of May, 1941.

WM. FLEET PALMER,
U. S. Atty.

By ARMOND MONROE JEWELL,
Attorney for Appellee.

[Endorsed]: Filed May 6, 1941. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

STIPULATION DESIGNATING THOSE PORTIONS OF THE RECORD ON APPEAL DEEMED MATERIAL AND WHICH ARE THEREFORE TO BE PRINTED.

Pursuant to Rule 19, Subdivision 6, of the Rules of Court of the United States Circuit Court of Appeals for the Ninth Circuit, It Is Hereby Stipulated by and between the respective parties hereto, through their respective counsel, that the following are deemed the material portions of the record on appeal in the above entitled cases and which are therefore to be printed:

1. Order Transferring Case Pursuant to Rule 19, dated February 8, 1939 (Case 1461 R.J.) (R. p. 23.)
2. Complaint (Case 1460-Y) (R. p. 2 to p. 6 inc.)
3. Complaint (Case 1461-Y) (R. p. 7 to p. 11 inc.)
4. Answer (Case 1460-Y) (R. p. 12 to p. 17 inc.)
5. Answer (Case 1461-Y) (R. p. 18 to p. 22 inc.)
6. Stipulation (Case 1460-Y) (R. p. 24 to p. 29 inc.)
7. Stipulation (Case 1461-Y) (R. p. 30 to p. 36 inc.)
8. Minute Order of Court before Hon. Leon R. Yankwich, Tuesday, January 16, 1940 (Cases 1460-Y and 1461-Y) (R. p. 37)
9. Amended and Supplemental Answer (Case No. 1461-Y) (R. p. 38 to p. 40 inc.)
10. Minute Order (Case No. 1460-Y) (R. pp. 41, 42)
11. Minute Order (Case 1461-Y) (R. pp. 43, 44)
12. Findings of Fact and Conclusions of Law (Cases 1460-Y and 1461-Y) (R. p. 45 to p. 54 Inc.)
13. Judgment (Cases 1460-Y and 1461-Y) (R. pp. 55, 56)
14. Notice of Appeal (Case 1460-Y) (R. p. 57)
15. Notice of Appeal (Case 1461-Y) (R. p. 58)
16. Stipulation for Consolidated Record on Ap-

peal and Order attached (Cases 1460-Y and 1461-Y) (R. pp. 59, 60)

17. Stipulation for Order Extending Time for Filing Record on Appeal and Docketing the Action, and Order (Cases 1460-Y and 1461-Y) (R. pp. 61, 62)

18. Designation of Record on Appeal (Cases 1460-Y and 1461-Y) (R. pp. 63, 64)

19. Order Permitting Original Exhibits to be Sent to Circuit Court in lieu of Copies on Appeal (Cases 1460-Y and 1461-Y) (R. pp. 65, 66)

It is further stipulated by and between the respective parties hereto, through their respective counsel, that in lieu of printing the material portions of the admissions in the pleadings, the written stipulations of fact, the documents admitted into evidence, and the verbal stipulations contained in the transcript of record, that for the purpose of this apeal, the following statement may and should

be printed as a summary of the facts adduced therefrom:

Dated: May 2, 1941.

MELVIN D. WILSON,

JOSEPH D. PEELER.

Attorneys for Apellant.

WM. FLEET PALMER,

United States Attorney.

E. H. MITCHELL,

Asst. United States Attorney.

ARMOND MONROE JEWELL,

Asst. United States Attorney.

By ARMOND MONROE JEWELL,

Attorneys for Appellee.

Approved:

LEON R. YANKWICH,

District Judge.

[Endorsed]: Filed May 6, 1941. Paul P. O'Brien,
Clerk.